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EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 456

CREATING THE IMPORT CONTROL COMMISSION TO ASSIST THE PRESIDENT IN THE EXECUTION OF REPUBLIC ACT NUMBERED SIX HUNDRED AND FIFTY, PROVIDING FOR THE REGULATION OF IMPORTS INTO THE PHILIPPINES.

By virtue of the powers vested in me by Republic Act Numbered Six hundred and fifty, entitled "An Act to regulate imports and for other purposes," I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. To assist the President of the Philippines in the execution of the provisions of Republic Act No. 650, there is hereby created an Import Control Commission composed of Alfredo Montelibano, Chairman; Alfonso Calalang, member; and Francisco Ortigas, member.

SEC. 2. The chairman and members of the Commission shall each receive a per diem for each meeting of the Commission attended, at a rate fixed by the President of the Philippines.

SEC. 3. The Commission shall have an executive officer to be appointed and whose salary shall be fixed by the President of the Philippines.

SEC. 4. The Commission shall immediately proceed to organize its office, drawing for the purpose such personnel as it may deem necessary from, and utilizing the equipment and records of, either the former Import Control Administration or the Price Stabilization Corporation (PRISCO), or both. As soon as the said office is organized, the Commission shall submit to the President:

- (a) A Budget of its expenses together with a plantilla of its personnel.
- (b) Rules and regulations for the enforcement of Republic Act No. 650.
- (c) Policies for the granting of quota allocations and import licenses.
- (d) A budget of the foreign exchange certified and made available for imports by the Central Bank of the Philippines, among commodities or groups of commodities.

SEC. 5. All officers and employees of the Commission shall be subject to the Civil Service Law, rules and regulations, except those whose positions may, upon rec-

ommendation of the Commission and the Commissioner of Civil Service, be declared by the President of the Philippines as policy-determining, primarily confidential or technical in nature.

Done in the City of Manila, this 1st day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 457

AMENDING EXECUTIVE ORDER NO. 38, DATED JANUARY 7, 1947, ENTITLED "PROVIDING FOR THE COAT OF ARMS, SEAL, AND FLAG OF THE PRESIDENT AND VICE PRESIDENT OF THE PHILIPPINES."

Pursuant to the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby amend sections 1 and 4 of Executive Order No. 38, dated January 7, 1947, entitled "Providing for the coat of arms, seal, and flag of the President and Vice President of the Philippines," to read as follows:

"SECTION 1. The Coat of Arms of the President of the Philippines shall be of the following design:

"SHIELD: The eight-rayed Philippine sun rayonnant, in or, (golden yellow); on the center, an equilateral triangle, in gule (red); over-all the traditional sea lion of the Coat of Arms granted to the City of Manila in 1596, on guard with sword, or, at hilt, and one mullet, or, (golden yellow), in the corner of each of the three angles of the equilateral triangle; one mullet representing Luzon; one, Visayas; and the other, Mindanao.

"The whole, surrounded by stars, or, (golden yellow), in the form of an annulet with one point of each star outward on the imaginary radiating center lines, the number of stars conforming to the number of the provinces of the Republic as of July 4, 1951."

"SEC. 4. The flag and colors of the Vice President shall be the same as that of the President with the exception that the entire design shall be placed on a white rectangular background and without the stars."

Done in the City of Manila, this 4th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 458

CREATING AN INTER-DEPARTMENTAL COMMITTEE ON COTTAGE INDUSTRIES

Pursuant to the powers vested in me by law, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. An Inter-Departmental Committee on Cottage Industries is hereby created, to be composed of nine members, each appointed by the respective Heads of the following departments, offices, corporations, or agencies of the government:

1. Department of Justice
2. Department of Agriculture and Natural Resources
3. Department of Education
4. Department of Labor
5. Department of Commerce and Industry
6. Office of Economic Coordination
7. Social Welfare Administration
8. Rehabilitation Finance Corporation
9. Price Stabilization Corporation

The Committee shall elect from among its members a Chairman and a Secretary. Decisions of the Committee shall be valid if approved by a majority of all the members.

SEC. 2. The functions of the Committee shall be to prepare, after proper survey and research work, a national program for the promotion and development of cottage industries in the Philippines; to coordinate and integrate the work of the different departments, offices, corporations, and agencies of the government concerning the development and promotion of cottage industries in the Philippines; and to give assistance to public and private enterprises in the development and promotion of cottage industries.

SEC. 3. The Committee shall promulgate rules and regulations to carry out its objectives. It is empowered to call upon any or all of the entities aforementioned for any assistance, data, and information that it may need. Decisions of the Committee may be appealed to the President of the Philippines.

SEC. 4. The Committee shall meet regularly at least once a month. Special meetings may be called by the Chairman or the Administrator of Economic Coordination.

SEC. 5. The Committee shall submit an annual report of its activities and accomplishments to the President of the Philippines at the end of every fiscal year, and such other reports as he may require from time to time.

Done in the City of Manila, this 13th day of July, in the Year of Our Lord, nineteen hundred and fifty-one, and of the independence of the Philippines, the sixth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

TEODORO EVANGELISTA

Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 459

AMENDING EXECUTIVE ORDER NUMBERED FOUR HUNDRED AND FORTY-THREE, EXECUTIVE ORDER NUMBERED FOUR HUNDRED AND FORTY-SEVEN, FIXING THE CEILING PRICES OF ROASTED GROUND COFFEE LOCALLY PREPARED AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring National Policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 4 of Executive Order No. 443, dated May 29, 1951, is hereby repealed by lifting the control on the prices of all kinds of wheat flour.

SEC. 2. Section 1 of Executive Order No. 447, dated June 9, 1951, is hereby amended by transferring the ceiling prices of the beverage HEMO from Group II (with 17 per cent special excise tax on foreign exchange) to Group I (without 17 per cent special excise tax on foreign exchange) of the same section.

SEC. 3. Section 1 of Executive Order No. 447, dated June 9, 1951, in so far as it sets up the maximum selling

prices of Frankfurters, is hereby repealed by setting up new ceiling prices as follows:

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's price	Wholesaler's price	Retailer's price
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Canned meat:

Frankfurters 24/12-oz. P34.25/cs. P37.37/cs. P1.75/tin

SEC. 4. The following roasted ground coffee locally prepared shall not be sold at more than the maximum selling prices for producers, wholesalers and retailers set opposite each:

FOODSTUFF (LOCAL)

Commodity	Unit	Producer's price	Wholesaler's price	Retailer's price
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Beverage:

ROASTED GROUND COFFEE LOCALLY

PREPARED WITH IMPORTED COFFEE

BEANS PACKED IN 18# CAN

100% Coffee Beans:

Brands: A B C, Aguila A
Atomic Special, Bander
a, CBH, Camel,
Corona, Diamond, Ele
phant, Good Morning
"A-1", La Estrella
Lion, Old Chef, Plan
tation, Rooster, Samson,
Ship A, Sta. Claus,
Tasty, Tiger, "51" and
all other brands—

7/8's Grade	Can/18#	P43.57	P47.53	P53.47
2/3's Grade	Can/18#	47.84	52.19	58.71

ROASTED GROUND COFFEE LOCALLY

PREPARED WITH IMPORTED COFFEE

AND SOYA BEANS PACKED IN 18#

CAN:

80% Coffee Beans-20% Soya

Beans:

Brands: Atomic, B-29,
Baguio, Camel A, Good
Morning "A-2", Ha
milton, Hilltown, Sun
shine, and all other
brands—

7/8's Grade	Can/18#	36.73	40.07	45.08
2/3's Grade	Can/18#	40.14	43.79	49.27

60% Coffee Beans-40% Soya

Beans:

Brands: Aguila B, Me
lody, Royal, Señorita,
and all other brands—

7/8's Grade	Can/18#	29.89	32.61	36.69
2/3's Grade	Can/18#	32.45	35.40	39.83

50% coffee Beans-50% Soy

Beans:

Brands: Aguila C, Alpine
Anchor, Ang Sarap,
Bescafe Cos Cola, Brazil
(White), CCC, Camel
B, Cos Cola, Dragon,

Commodity	Unit	Producer's price	Whole-saler's price	Retailer's price
Eagle (Blue), Owl, Red Rose, Rose, Roy, Ship B, Star, Sunrise, Violin, White House, "51," and all other brands—				
7/8's Grade	Can/18#	P26.47	P28.88	P32.49
2/3's Grade	Can/18#	28.60	31.20	35.11
20% Coffee Beans—80% Soya Beans:				
Brands: Anchor, California, Dawn, Flying Horse, Lakewood, Musical, Paramount, and all other brands—				
7/8's Grade	Can/18#	16.21	17.69	19.90
2/3's Grade	Can/18#	17.06	18.62	20.94
ROASTED GROUND COFFEE LOCALLY PREPARED WITH IMPORTED COFFEE AND SOYA BEANS PACKED IN 1#				
80% Coffee Beans—20% Soya Beans:				
Brands: Coronet, Hamilton Hilltown, Washington, and all other brands—				
7/8's Grade	Tin/1#	2.57	2.81	3.16
	Bot/1#	2.30	2.51	2.82
	Bag/1#	1.99	2.17	2.44
2/3's Grade	Tin/1#	2.76	3.01	3.39
	Bot/1#	2.49	2.71	3.05
	Bag/1#	2.18	2.38	2.67
60% Coffee Beans—40% Soya Beans:				
Brands: All Brands—				
7/8's Grade	Tin/1#	2.19	2.39	2.69
	Bot/1#	1.92	2.09	2.35
	Bag/1#	1.61	1.76	1.97
2/3's Grade	Tin/1#	2.33	2.55	2.86
	Bot/1#	2.06	2.25	2.53
	Bag/1#	1.75	1.91	2.15
50% Coffee Beans—50% Soya Beans:				
Brands: Aguila "C," Gold Money, Washington, and all other brands—				
7/8's Grade	Tin/1#	2.00	2.18	2.46
	Bot/1#	1.73	1.83	2.12
	Bag/1#	1.42	1.55	1.74
2/3's Grade	Tin/1#	2.12	2.31	2.60
	Bot/1#	1.85	2.01	2.26
	Bag/1#	1.54	1.63	1.89
20% Coffee Beans—80% Soya Beans:				
Brands: Musical, "W," and all other brands—				
7/8's Grade	Tin/1#	1.43	1.56	1.76
	Bot/1#	1.16	1.26	1.42
	Bag/1#	0.85	0.93	1.04
2/3's Grade	Tin/1#	1.48	1.61	1.82
	Bot/1#	1.20	1.31	1.48
	Bag/1#	0.90	0.98	1.10

SEC. 5. The ceiling prices fixed in this Order include for Frankfurters the 17 per cent special excise tax on foreign exchange, 7 per cent sales tax and 1 per cent municipal tax, and for roasted ground coffee, locally prepared, the 7 per cent sales tax and 1 per cent municipal tax.

SEC. 6. This Order shall take effect immediately.

Done in the City of Manila, this 20th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 460

AMENDING EXECUTIVE ORDER NUMBERED THREE HUNDRED AND FORTY-THREE, EXECUTIVE ORDER NUMBERED THREE HUNDRED AND FIFTY-THREE, EXECUTIVE ORDER NUMBERED FOUR HUNDRED AND SEVEN, EXECUTIVE ORDER NUMBERED FOUR HUNDRED AND EIGHT AND EXECUTIVE ORDER NUMBERED FOUR HUNDRED AND FORTY-EIGHT, FIXING CEILING PRICES OF IMPORTED ESSENTIAL COMMODITIES AND FOR OTHER PURPOSES.

By virtue of the powers vested in me by section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," and upon the recommendation of the Price Administration Board, I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 1 of Executive Order No. 353, dated October 6, 1950, and section 1 of Executive Order No. 407, dated February 3, 1951, insofar as they set up the ceiling prices of imported shoe materials, and section 2 of Executive Order No. 408, dated February 3, 1951, are hereby

repealed by setting up new ceiling prices of imported shoe materials as follows:

SHOE MATERIALS (IMPORTED)

Commodity	Unit	Importer's price	Whole-saler's price to shoe-maker's
<i>Finished Upper Leather:</i>			
White Ivory Sides #289 and #3M....	Sq. Ft.	P2.65	P2.93
<i>Luxury Black Patent, Large and Sides:</i>			
DXM and CM.....	Sq. Ft.	2.58	2.85
DXPLN	Sq. Ft.	2.58	2.85
<i>Colonial #200 White:</i>			
CM Smooth Large and Sides.....	Sq. Ft.	2.76	3.06
DM Smooth Large and Sides.....	Sq. Ft.	2.69	2.98
DXM Smooth Large and Sides.....	Sq. Ft.	2.46	2.73
DXH Velka Sides.....	Sq. Ft.	2.50	2.77
DXH Velka Large.....	Sq. Ft.	2.46	2.73
DXM Velka Kip.....	Sq. Ft.	2.42	2.68
DXM Velka Sides.....	Sq. Ft.	2.42	2.68
<i>Colonial #210 Red:</i>			
DM Smooth Large.....	Sq. Ft.	2.46	2.73
DXM Smooth Large.....	Sq. Ft.	2.27	2.52
Gunmetal Par #41 DDM and Elite..	Sq. Ft.	1.93	2.14
<i>White Smooth Sides:</i>			
Grade 1	Sq. Ft.	2.41	2.67
Grade 2	Sq. Ft.	2.33	2.58
Grade 3	Sq. Ft.	2.25	2.49
Grade 4	Sq. Ft.	2.11	2.34
Grade 5 Extremes.....	Sq. Ft.	2.11	2.34
<i>Primo Sides, Black:</i>			
Grade DXH	Sq. Ft.	2.46	2.73
Grade DXXH	Sq. Ft.	2.39	2.64
Grade DXXXH	Sq. Ft.	2.29	2.53
<i>White Elko:</i>			
Grade LM4	Sq. Ft.	2.30	2.55
Grade M4	Sq. Ft.	2.30	2.55
<i>Buck Upper Leather:</i>			
Prime HM White.....	Sq. Ft.	4.35	4.82
#1 HM White.....	Sq. Ft.	4.35	4.82
#2 HM White.....	Sq. Ft.	4.17	4.61
#3 HM White.....	Sq. Ft.	2.58	2.85
#4 HM White.....	Sq. Ft.	2.35	2.60
#5 HM White.....	Sq. Ft.	1.51	1.68
<i>White Buck Sides Betonia Lable:</i>			
HM Weight #3.....	Sq. Ft.	2.65	2.93
HM Weight #4.....	Sq. Ft.	2.17	2.40
<i>Finish Upper Leather:</i>			
Greenbaun Smooth Dresides As-sorted Colors	Sq. Ft.	2.89	3.20
<i>Heeling Board:</i>			
Size: 41" x 25".....	Bundel	57.94	64.15
Size: 41" x 25".....	kilo	1.02	1.13
Sole Leather Bellies.....	kilo	4.64	5.14
Sole Leather Butts.....	kilo	4.87	5.39

SHOE MATERIALS (IMPORTED)—*Continued*

Commodity	Unit	Importer's price	Wholesaler's price to shoe-maker's
<i>Leather Sole:</i>			
TR Joppa Bends 9 Iron up.....	kilo	₹7.76	₹8.59
Rubber Soling Slabs 12 Iron (Black)			
Size 36" x 36".....	sheet	11.56	12.80
Composition Soling Slabs Synthetic			
8 Iron Size 36" x 36".....	sheet	9.35	10.35
Composition Men's Sole Synthetic 12			
Iron Style—			
Black, Size: 7, 8 and 9.....	Pair	1.31	1.46
Brown, Size: 7, 8 and 9.....	Pair	1.44	1.59
Sole Leather Bends #142 Wolf Brand			
TR 9	kilo	5.08	5.63
Leather Inner Sole 50—			
G up S, Size: 7/11.....	Pair	1.06	1.17
50 BT, Size: 7/11.....	Pair	1.06	1.17
Men's Fibre Moulded Counters,			
Sizes: 0, 1 or 3.....	100 prs.	14.14	15.66
Men's Welt Counter, Sizes: Small,			
Medium, or Large.....	100 prs.	14.80	16.38
Junior Heels ¾". Black, Size: 14....	Doz. prs.	2.54	2.81
Black Midsoling Composition Rubber			
#10½ Iron	Sheet	10.61	11.75
Black Full Heels Plymouth Design			
8-Nail Holes, Sizes: 6/8, 9/10, 10/11			
and 11/12	Pair	0.45	0.50
<i>Shoe Gore (Elastic) Width 2½":</i>			
Color: White and Black.....	Yard	2.55	2.82
Army Russet (Brown) and Beige			
(Cream)	Yard	2.70	2.99
<i>Shoe Materials (Australia) Sole Leather:</i>			
Bends	Kilo	9.93	11.00
Shoulder	Kilo	8.07	8.94
Bellies	Kilo	7.10	7.86
Belly ends	Kilo	5.15	5.70
Belly wings	Kilo	4.97	5.50
<i>Shoe Laces:</i>			
Sizes:			
#440-27" White Brown, Maho-			
gany or Black.....	Gross	4.15	4.59
#440-36" White, or Mahogany....	Gross	3.77	4.17
#440-40" White, or Mahogany....	Gross	4.15	4.59
#324-27" White, or Mahogany....	Gross	3.72	4.12
#250-27" White or Black.....	Gross	4.38	4.85
#250-36" White	Gross	5.47	6.06
#250-40" White	Gross	6.08	6.73
#526-40" White or Mahogany....	Gross	5.36	5.94
#141-27" Black or Brown.....	Gross	2.95	3.27
#324-36" White or Mahogany....	Gross	4.45	4.93
#400-27" White or Mahogany....	Gross	4.05	4.48
<i>Shoe Thread:</i>			
Qualitex Cotton Shoe Thread Glaze			
Finished 6,000 yards/spools #30			
Color: White, Black and Maho-			
gany	Spool	7.52	8.33

SHOE MATERIALS (IMPORTED)—*Continued*

Commodity	Unit	Importer's price	Whole-saler's price to shoe-maker's
Armed Brand King Spool Glazed Cotton Sewing Thread, 6,000 yds/spool—			
Color:			
Black or Mahonagy.....	Spool	P7.37	P8.16
White	Spool	7.25	8.03
<i>Possaic Cotton Shoe Thread:</i>			
Sizes: 6, 7, 12 and 14 Cord.....	lb.	4.96	5.49
<i>Quarterlining for Shoes:</i>			
Leatherboard Back Plyhide embossed Buffalo Grain 54" wide, Color:			
No. 600 Tan.....	Yard	4.02	4.45
No. 775 Ginger.....	Yard	4.02	4.45
No. 100 Plykaf, Dull Finish Smooth Grain 36" wide.....	Yard	3.03	3.35
No. 9 Plykaf, Bright Glaze Omega Grain 36" wide.....	Yard	2.18	2.42
Imitation Leather: (Plastic Materials) 54" wide Gauge 0.012" Color: Hollyberry, Jade Green, Ivory, Empire Blue and Chartuse	Yard	3.44	3.81
No. 100 Plykaf, Imitation Leather Dull Finish, Smooth Grain, 38" wide, Color: No. 151 Waterlily, No. 197 Light Gray.....	Yard	2.87	3.18
Imitation Leather: (Calf Plastic) 48" wide Gauge 0.020" Color: Army Russet, Lipstick Red, Royal Blue, Sky Blue, Town Brown, Beige, Pink, White, Brown Wine and Powder Blue.....	Sq. Ft.	0.21	0.23
Black	Sq. Ft.	0.17	0.19
Imitation Leather No. 110 Plykaf, Omega Grain Bright Glaze, 36" wide Color: London Tan, Brown, Waterlily, Black	Yard	3.03	3.35
Imitation Leather: #15 Kafsted very bright smooth black.....	Yard	2.12	2.35
Imitation Leather Calftex Junior 36" wide, Color: No. 319 Brown, Black, Waterlily or White.....	Yard	3.31	3.67
Imitation Leather Garcaf: Kid Grain, Color: Green, Waterlily, Red, White, or Black.....	Yard	2.95	3.27
Rubberized Piece Goods, Plain Dull Style No. 135 Durakalf, Color: #35-L (Waterlily), #34-L (Fawn), #236-L (Black), #243-L (White).....	Yard	2.01	2.22
Imitation Suediens: Width 38"/39" Color: Black or Slate Gray.....	Yard	5.04	5.58
Rubberized Cotton Fabrics, 36" wide	Yard	3.51	3.89
<i>Rubber Cement:</i>			
Tin #53	Gal.	6.10	6.74
Shoe Cement #234.....	Gal.	13.62	15.08

SHOE MATERIALS (IMPORTED)—*Continued*

Commodity	Unit	Importer's price	Wholesaler's price to shoe-maker's
<i>Miscellaneous:</i>			
Black Kid Dressing Packed:			
38/squat Quart tins/cs.	Gal.	P15.31	P16.95
40/squat Quart tins/cs.	Gal.	15.31	16.95
Hand Shoe Tacks:			
Sizes:			
#2½	Pound	1.14	1.26
#3	Pound	1.06	1.18
#4	Pound	1.01	1.12
Nickled Snap Fastner for Shoes:			
#DI934	Gross	2.10	2.32
<i>Plastic Belting, Looping and Buckles:</i>			
Sizes:			
1" Belting 20 ft./lb.	Pound	2.57	2.85
½" Looping 60 ft./lb.	Pound	2.57	2.85
1" Buckle 250 w/gilt Prong.....	Gross	9.32	10.32
Plastic Sheetting, First Quality: Size:			
54" wide gauge 12.....	Yard	3.74	4.14

SEC. 2. The following essential commodities shall not be sold at more than the maximum selling prices for importers, wholesales and retailers set opposite each:

FOODSTUFF (IMPORTED)

Commodity	Unit	Importer's price	Wholesaler's price	Retailer's price
<i>Canned Fish:</i>				
Sardines in Natural Sauce in Tall Round Tin:				
Portola and Van Camp	100/5-oz.	P20.45/cs.	P22.30/cs.	P0.25/tin
Eatwell and all other Brands	100/5-oz.	18.65/cs.	20.35/cs.	0.23/tin
Canadian Salmon (flat)	48/7½-oz.	26.23/cs.	28.62/cs.	0.67/tin

POULTRY FEEDS (IMPORTED)

Commodity	Unit	Wholesaler's price	Retailer's price
<i>Poultry Feeds:</i>			
FUL-O-PEP Laying Mash.....	Bag/100#	P18.50	P21.02
FUL-O-PEP Chick Starter.....	Bag/100#	20.55	23.36
FUL-O-PEP Growing Mash.....	Bag/100#	19.17	21.78

CONSTRUCTION MATERIALS (IMPORTED)

Commodity	Unit	Wholesaler's price	Retailer's price
<i>Aluminium Sheets (U. S.):</i>			
Sizes:			
Gauge No.			
.019 x 26" x 6'	Corr. Sheet	P5.15	P5.72
.019 x 26" x 7'	Corr. Sheet	6.01	6.68
.019 x 26" x 8'	Corr. Sheet	6.87	7.63
.019 x 26" x 9'	Corr. Sheet	7.73	8.59
.019 x 26" x 10'	Corr. Sheet	8.59	9.54
.019 x 26" x 12'	Corr. Sheet	10.30	11.45
.019 x 28" x 8'	Plain Sheet	6.87	7.63

CONSTRUCTION MATERIALS (IMPORTED)—Continued

Commodity	Unit	Wholesaler's price	Retailer's price
<i>Flat Bars:</i>			
<i>Sizes:</i>			
3/16" x 3/4" x 20'.....	Kilo	P0.57	P0.64
3/16" x 1" x 20'.....	Kilo	0.56	0.62
1/4" x 1" x 20'.....	Kilo	0.55	0.61
1/4" x 1 1/2" x 20'.....	Kilo	0.55	0.61
1/4" x 2" x 20'.....	Kilo	0.55	0.61
1/2" x 1 1/2" x 20'.....	Kilo	0.55	0.61
1/2" x 2" x 20'.....	Kilo	0.55	0.61
1/2" x 2 1/2" x 20'.....	Kilo	0.55	0.61

Reinforcing Steel Bars:

Sizes in Diameter and Length:

1/4" x 20' to 40'.....	Kilo	0.58	0.65
5/16" x 20' to 40'.....	Kilo	0.58	0.65

Galvanized Pipes:

Sizes in Diameter and Length:

2 1/2" x 12".....	Foot	1.89	2.10
2 1/2" x 20'.....	20 Ft.	37.80	42.00
3" x 12".....	Foot	2.81	3.12
3" x 20'.....	20 Ft.	56.20	62.40
4" x 12".....	Foot	4.06	4.52
4" x 20'.....	20 Ft.	81.20	90.40

SEC. 3. Section 1 of Executive Order No. 343, dated August 14, 1950, is hereby amended by increasing and setting up new ceiling prices for Simpson Board as follows:

CONSTRUCTION MATERIAL (IMPORTED)

Commodity	Unit	Wholesaler's price	Retailer's price
<i>Simpson Insulating Board:</i>			
<i>Sizes:</i>			

3/8" x 4' x 8'.....	Sheet	P6.10	P6.80
1/2" x 4' x 8'.....	Sheet	7.70	8.55

SEC. 4. Section 1 of Executive Order No. 448, dated June 9, 1951, is hereby amended by increasing and setting up new ceiling prices for Chapco Board as follows:

CONSTRUCTION MATERIAL (IMPORTED)

Commodity	Unit	Wholesaler's price	Retailer's price
<i>Wallboard: Chapco Board</i>			
<i>Size:</i>			

1/8" x 4' x 8'.....	Sheet	P7.19	P7.99
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SEC. 5. The ceiling prices fixed in the Order include the 17 per cent Special Excise Tax on Foreign Exchange, 7 per cent Sales Tax and 1 per cent Municipal Tax on Shoe Materials and construction materials and 7 per cent Sales Tax and 1 per cent Municipal Tax on Foodstuff and Poultry Feeds.

SEC. 6. This Order shall take effect immediately.

Done in the City of Manila this 27th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER No. 461

AMENDING EXECUTIVE ORDERS NUMBERED FOUR
HUNDRED FORTY-SEVEN, FOUR HUNDRED
FORTY-NINE, FOUR HUNDRED FIFTY-ONE AND
FOUR HUNDRED FIFTY-TWO.

By virtue of the powers vested in me by Section 3 of Republic Act No. 509, entitled "An Act declaring national policy, authorizing the President of the Philippines for a limited period to fix ceiling prices of commodities and to promulgate rules and regulations regarding prices of commodities to effectuate such policy, and authorizing the appropriation of a certain sum for the purpose," I, Elpidio Quirino, President of the Philippines, do hereby order:

SECTION 1. Section 1 of Executive Order No. 447, dated June 9, 1951, is hereby amended by fixing the retailer's price of Mello Cup Roasted Ground Coffee at ₱3.28.

SEC. 2. Section 1 of Executive Order No. 449, dated June 9, 1951, is hereby amended by fixing the retailer's price of "Peco", Dixon Lead Pencil at ₱0.06; of "Zero", Eberhard Faber Pencil at ₱0.06; of Manila Paper, size 36" by 48"—80 lbs.—480 sheets at ₱0.06.

SEC. 3. Section 1 of Executive Order No. 451, dated June 9, 1951, is hereby amended by fixing the retailer's price of Highway Type Truck & Bus Tires, size 10.00-22, 12 ply rating at ₱388 and changing the ply rating of Farm Tractor Tires—Ribbed Front Tires, size 5.50-16, from 4 to 6.

SEC. 4. Section 1 of Executive Order No. 452, dated June 9, 1951, is hereby amended by fixing the wholesaler's price and the retailer's price of Number Stories—Book Two at ₱3.45 and ₱3.98, respectively.

SEC. 5. This Order shall take effect as of June 9, 1951.

Done in the City of Manila, this 27th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 263

RESERVING FOR SCHOOL SITE PURPOSES CERTAIN PARCELS OF THE PUBLIC DOMAIN SITUATED IN THE BARRIO OF TANGOS, MUNICIPALITY OF NAVOTAS, PROVINCE OF RIZAL, ISLAND OF LUZON.

Upon the recommendation of the Secretary of Agriculture and Natural Resources and pursuant to the provisions of section 83 of Commonwealth Act No. 141, as amended, I hereby withdraw from sale or settlement and reserve for school site purposes under the administration of the Director of Public Schools subject to private rights, if any there be, certain parcels of the public domain situated in the barrio of Tangos, municipality of Navotas, Province of Rizal, Island of Luzon, and more particularly described in the Bureau of Lands plan Psu-127214, to wit:

"Lot 1

Psu-127214

(Parents-Teachers Association)

A parcel of land (Lot 1 as shown on plan Psu-127214, G.L.R.O. Record No.——), situated in the barrio of Tangos, municipality of Navotas, Province of Rizal. Bounded on the E., by property of Placido Hizon et al., claimed by heirs of Marcelina Giongco; on the SE., by property of Placido Hizon et al., claimed by heirs of Marcelina Giongco; on the SW., by public land (Sea Shore); and on the NW., by Navotas-Malabon River. Beginning at a point marked "1" on plan, being N. 49° 49' W., 1,883.52 m. from B.L.L.M. 1, Mp. of Navotas, Rizal, thence N. 20° 59' W., 117.65 m. to point "2"; thence N. 59° 02' E., 38.15 m. to point "3"; thence N. 58° 27' E., 17.36 m. to point "4"; thence N. 59° 08' E., 71.81 m. to point "5" thence S. 14° 36' E., 15.00 m. to point "6"; thence S. 67° 33' W., 10.34 m. to point "7"; thence S. 0° 10' E., 60.85 m. to point "8"; thence S. 37° 52' W., 95.12 m. to point "9"; thence S. 8° 08' W., 21.20 m. to the point of beginning; containing an area of eight thousand nine hundred forty-seven (8,947) square meters, more or less. All points referred to are indicated on the plan and are marked

on the ground as follows: point 6, by Old P.L.S. Hardstone; and the rest, by 2" G.I. pipes; bearings true; declination $0^{\circ} 48' E.$; date of survey, Feb. 22 and Sept. 2, 1950, and that of the approval, Nov. 27, 1950.

"Lot 2

Psu-127214

(Parents-Teachers Association)

A parcel of land (Lot 2 as shown on plan Psu-127214, G.L.R. O. Record No.), situated in the barrio of Tangos, municipality of Navotas, Province of Rizal. Bounded on the NE., by property of Placido Hizon et al., claimed by heirs of Marcelina Giongco (Existing School Site); on the S., by property of Santiago de la Peña; and on the SW., by public land (Seashore). Beginning at a point marked "1" on plan, being N. $49^{\circ} 49' W.$, 1,883.52 m. from B.L.L.M. 1, municipality of Navotas, Rizal, thence S. $54^{\circ} 03' E.$, 129.42 m. to point "2"; thence S. $85^{\circ} 18' W.$, 57.02 m. to point "3"; thence N. $30^{\circ} 44' W.$, 93.82 m. to the point of beginning; containing an area of two thousand four hundred and three (2,403) square meters, more or less. All points referred to are indicated on the plan and are marked on the ground as follows: points 1 and 3, by 2" or G.I. Pipes; and point 2, by Old P.L.S. Hardstone; bearings true; declination $0^{\circ} 48' E.$; date of survey, Feb. 22 and Sept. 2, 1950, and that of the approval, Nov. 27, 1950."

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 6th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 264

TERMINATING THE STATE OF WAR WITH
GERMANY

WHEREAS, on December 11, 1941 the United States of America declared that a state of war existed between the United States and Germany;

WHEREAS, by virtue of the relationship existing between the Commonwealth of the Philippines and the United States of America the Philippines acquired a belligerent

status at the moment the state of war was declared between the United States and Germany;

WHEREAS, before December 11, 1941, the Philippine Army was inducted into the service of the Armed Forces of the United States of America;

WHEREAS, on June 14, 1942, the Philippines became a signatory to the Declaration by the United Nations, otherwise known as the Allied War Pact, and thereby pledged to employ its full resources, military or economic, against the common enemies and promised not to make separate peace or armistice with any of them;

WHEREAS, the three Western Occupying Powers, namely, the United States, the United Kingdom and France agreed in September, 1950 to proceed with domestic measures required to terminate the state of war with Germany and expressed the hope that other countries will take similar action;

WHEREAS, the aforementioned occupying Powers have suggested that the Philippine Government, if it is still at war with Germany and agrees to the desirability of terminating the state of war with that country, might wish to coordinate its timing of such action with those of the three occupying Powers;

WHEREAS, the three occupying Powers, in agreeing to proceed with domestic measures to terminate the state of war between themselves and Germany have assumed that:

(1) Neither the Occupation nor the supreme authority in Germany of the occupying Powers is dependent upon the continuance of a state of war; their status in Germany rests upon the complete defeat of Germany and the assumption of supreme authority rather than upon the rights of belligerents occupying enemy territory in time of war;

(2) Termination of a state of war should not be given a form such that it might be interpreted as a separate peace settlement with Western Germany; termination by domestic action in no way prejudices a peace settlement;

(3) Domestic measures by France, the United States and the United Kingdom terminating a state of war will apply to the whole of Germany and to all German nationals.

WHEREAS, recent developments in world affairs have made it desirable that the state of war with Germany should be terminated in order to integrate the German people into the community of the peace-loving peoples of the world;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, upon the recommendation of the Secretary of Foreign Affairs, have, on this date and in coordination with the action of the Allied Powers, sent a message to the Congress of the Philippines recommending the approval of a resolution terminating, for domestic purposes,

the state of war between the Philippines and Germany as of July 9, 1951, without prejudice to the conclusion hereafter of a formal peace settlement with Germany. In view hereof, all administrative agencies of this government are hereby enjoined to refrain from any action which might impair the projected termination of the war as of this date pending appropriate action by the Congress of the Philippines.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done at the City of Manila, this 9th day of July, in the year of Our Lord, nineteen hundred and fifty one, and of the Independence of the Republic of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 265

PUBLISHING THE VALUE OF THE ARGENTINA
PESO FOR THE PURPOSE OF THE ASSESSMENT
AND COLLECTION OF DUTY.

Pursuant to the authority vested in me by Republic Act No. 77 and upon the recommendation of the Undersecretary of Finance, the value of the Argentina peso is hereby fixed at ₱0.40, Philippine currency, which is equivalent to \$0.20, United States currency.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 13th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 266

DECLARING DECEMBER 10-16, 1951, AS THE "GOLD-
EN JUBILEE WEEK COMMEMORATING THE
ESTABLISHMENT OF THE PHILIPPINE EDUCA-
TIONAL SYSTEM."

WHEREAS, 1951 is the fiftieth anniversary of the establish-
ment of the Philippine educational system as provided in
Act 74 of the Philippine Commission;

WHEREAS, the progress of the Philippines in science, art,
letters, industry, agriculture, and government has been due
in a large measure to the Philippine educational system;

WHEREAS, it is desirable to apprise the people of the
achievements of the Philippines in education and of the
progress she has made through education;

WHEREAS, it would be advantageous to indicate lines of
further growth and advancement of the system; and

WHEREAS, educators in and out of the government have
formed a civic group to work for the proper celebration of
the fiftieth anniversary of the establishment of the Phil-
ippine educational system and have petitioned for setting
aside the period from December 10-16, 1951, as the date
for the celebration;

Now, THEREFORE, I, Elpidio Quirino, President of the
Philippines, do hereby proclaim the period from December
10-16, 1951, as the "Golden Jubilee Week to Commemorate
the Establishment of the Philippine Educational System";
call upon all government entities and instrumentalities to
participate in the celebration; and invite all private institu-
tions and individuals to join in making the celebration fruit-
ful of good results.

For the present year the Education Week set for Septem-
ber under Proclamation No. 123, dated April 22, 1949,
shall be made to coincide with the period herein fixed for
the Golden Jubilee Celebration.

IN WITNESS WHEREOF, I have hereunto set my hand and
caused the seal of the Republic of the Philippines to be
affixed.

Done in the City of Manila, this 20th day of July, in the
year of Our Lord, nineteen hundred and fifty-one, and of
the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION No. 267

DECLARING MONDAY, AUGUST 20, 1951, A SPECIAL
PUBLIC HOLIDAY

WHEREAS, August 19, 1951, the seventy-third anniversary of the birth of the late President Manuel L. Quezon, falls on Sunday; and

WHEREAS, I have been apprised of the people's desire to have the following day, Monday, August 20, 1951, declared a special public holiday to enable them to pay their homage to the memory of our illustrious leader;

NOW, THEREFORE, I, Elpidio Quirino, President of the Philippines, by virtue of the powers vested in me by section 30 of the Revised Administrative Code, do hereby declare Monday, August 20, 1951, as a special public holiday.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 25th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

[SEAL]

ELPIDIO QUIRINO
President of the Philippines

By the President:

MARCIANO ROQUE
Acting Assistant Executive Secretary

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 159

PRESCRIBING POLICIES, RULES AND REGULATIONS FOR THE ENFORCEMENT OF REPUBLIC ACT NO. 650, ENTITLED "AN ACT TO REGULATE IMPORTS AND FOR OTHER PURPOSES."

Upon the recommendation of the Import Control Commission, the following policies, rules and regulations are hereby prescribed for the enforcement of Republic Act No. 650, entitled "An Act to regulate imports and for other purposes."

SECTION 1. Importers shall be classified into three general categories, namely: (a) government agencies and instrumentalities, (b) bona fide producers, and (c) bona fide importers (old and new).

SEC. 2. The requirements for the submission of applications to import shall be prescribed and promulgated by the Import Control Commission as soon as practicable. The applications shall be numbered chronologically according to the dates when they are received.

SEC. 3. Except those specified in section 10 of Republic Act No. 650, commodity imports subjects to licensing shall be divided into two categories: controlled goods and decontrolled goods. Controlled goods shall be composed of all essential items listed in Appendix A of Republic Act No. 650 and of items not listed therein and not decontrolled.

SEC. 4. The general procedure for the issuance of licenses shall be in accordance with priorities established by section 4 of Republic Act No. 650, but such priorities shall strictly adhere to the chronological order of the receipt of the corresponding applications.

Done in the City of Manila, this 2nd day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the fifth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

ADMINISTRATIVE ORDER No. 160

(Will be published upon release.)

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 161

REMOVING MR. FELIPE E. JOSE FROM OFFICE AS
DIRECTOR OF LABOR

This is an administrative case against Mr. Felipe E. Jose, Director of Labor, who stands charged with a number of irregularities involving, among others, abuse of authority, bribery and corruption. These charges were investigated by the Integrity Board which found the following facts to have been satisfactorily established:

1. That respondent Director recommended in writing the employment of the detective agency of Colonel Lamberto Javalera to different commercial houses in Manila, informing them that in the agency of Fausto Alberto, one of the complainants herein, which had in its employ more than 200 men and was rendering loyal and efficient service

to said firms, there was dissension between the agency and its watchmen and that it was on the verge of insolvency and dissolution which information was not true;

2. That he hired and used cars of the Central Garage, keeping them generally from seven o'clock in the morning to about twelve o'clock midnight, from Monday to Sunday almost every week, for a period of almost two years, specifically from October 1948 to July 1950, representing an average monthly expense of ₱1,200 for the Bureau of Labor, despite warning given him by the accounting officer thereof that funds for traveling expenses had already been exhausted; that he compelled said accounting officer to falsely certify that funds for traveling expenses were available; and that he used these cars for supposed inspections of Chinese establishments made during the time his wife was campaigning for her candidacy as "Mrs. Philippines of 1949";

3. That respondent conducted investigations of alleged violations of labor laws and regulations ex-parte, by hearing the complainant alone in the absence of the person complained against, or vice-versa, without benefit of stenographic record or the assistance of any other official or employee, thereby inviting temptations to infidelity to the service; and that at times he would change a decision rendered by him by reducing the amount to be paid after the party complained against had appeared before him ostensibly for the purpose of hearing his side, a case in point being that of Camilo Balones wherein the amount to be paid by the respondent therein was radically reduced from ₱7,607.79 to ₱300; and

4. That his bank deposits and those of his minor children from November 1948 to April 1950 were rather heavy and the same, with the exception of that corresponding to the war damage payment, were not explained, respondent choosing not to take the stand.

In the light of the afore-cited facts, the Integrity Board concluded that respondent is guilty of abuse of authority, violation of his oath of office and of conduct highly unbecoming an official of his rank. I have carefully examined and considered the evidence of record and I fully agree with the findings and conclusions of that body.

It cannot be too often repeated that a public office is a public trust and not the property of the incumbent thereof; that it must be discharged not only in accordance with the terms of the oath of office and the provisions of law involved, but the incumbent must also observe certain recognized moral and ethical standards of conduct. It is regrettable that Mr. Jose should have allowed himself to be guided by questionable personal motives in his official actuations. I am therefore constrained to take drastic action against him for the protection of the public service.

Wherefore, and as recommended by the Integrity Board, Mr. Felipe E. Jose is hereby removed from office as Director of Labor, effective as of the date of his preventive suspension by reason of this case.

Done in the City of Manila, this 7th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

MALACAÑAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 162

REMOVING MR. BERNARDO BAGAMASPAD FROM
OFFICE AS PROVINCIAL TREASURER OF CO-
TABATO.

This is an administrative case against Mr. Bernardo Bagamaspad, provincial treasurer of Cotabato, in connection with irregularities committed by him while he was agent ex-officio of the Philippine National Bank in that province.

It appears from the decision of the Supreme Court, affirming that of the Court of First Instance of Cotabato, that, in utter disregard of the instructions and regulations of the Philippine National Bank and with gross negligence and carelessness, respondent and his assistant, Mr. Bienvenido M. Ferrer, granted special crop loans to unqualified and insolvent borrowers; and that as a result thereof the Philippine National Bank suffered losses in the huge amount of ₱699,803.57 which they were required to reimburse to said entity.

Wherefore, Mr. Bernardo Bagamaspad is hereby removed from office as provincial treasurer of Cotabato, effective as of February 13, 1948, the date of the preventive suspension.

Done in the City of Manila, this 27th day of July, in the year of Our Lord, nineteen hundred and fifty-one, and of the Independence of the Philippines, the sixth.

ELPIDIO QUIRINO

President of the Philippines

By the President:

MARCIANO ROQUE

Acting Assistant Executive Secretary

REPUBLIC ACTS

Enacted during the second session of the Second Congress, Republic of the Philippines, from January 22, 1951

H. No. 1553

[REPUBLIC ACT No. 626]

AN ACT APPROPRIATING THE SUM OF FOUR MILLION PESOS TO DEFRAY THE EXPENSES OF THE NATIONAL GOVERNMENT IN CONNECTION WITH THE ELECTION OF ELECTIVE PROVINCIAL, CITY AND MUNICIPAL OFFICIALS AND OF THE EIGHT SENATORS TO BE HELD IN NOVEMBER THIRTEEN, NINETEEN HUNDRED AND FIFTY-ONE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Out of any funds in the National Treasury not otherwise appropriated there is hereby appropriated the sum of four million pesos for the payment, subject to the approval of the Commission on Elections, of the expenses which may be incurred by the National Government in the holding of the election on November thirteen, nineteen hundred and fifty-one of the elective provincial, city and municipal officials and of the eight senators who will succeed those whose terms of office will expire on December thirtieth, nineteen hundred and fifty-one. The sum herein appropriated shall be liable for the corresponding share of the National Government in the expenses of the election in accordance with section twenty-four of the Revised Election Code.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 5, 1951.

H. No. 1646

[REPUBLIC ACT No. 627]

AN ACT GRANTING THE ARGAO ELECTRIC, ICE AND WATER COMPANY A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT, AND POWER SYSTEM IN THE MUNICIPALITY OF ARGAO, PROVINCE OF CEBU.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to the Argao Electric, Ice and Water Company, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat, and power system for the purpose of generating and

distributing electric light, heat, and/or power for sale within the municipality of Argao, Province of Cebu.

SEC. 2. It is expressly provided that in the event the Government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 5, 1951.

H. No. 2004

[REPUBLIC ACT NO. 628]

AN ACT APPROPRIATING ADDITIONAL FUNDS FOR THE OPERATION AND MAINTENANCE OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES DURING THE PERIOD FROM JULY FIRST, NINETEEN HUNDRED AND FIFTY TO JUNE THIRTIETH, NINETEEN HUNDRED AND FIFTY-ONE AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sums, or so much thereof as may be necessary, are appropriated out of any funds in the Philippine Treasury not otherwise appropriated, during the period from July first, nineteen hundred and fifty to June thirtieth, nineteen hundred and fifty-one, for the purposes specified hereunder:

ORDINARY EXPENDITURES

A.—CONGRESS OF THE PHILIPPINES

(2) HOUSE OF REPRESENTATIVES

(a) House Electoral Tribunal

SUNDRY EXPENSES

1. Traveling expenses of the Tribunal including laborers to be used for hauling and handling ballot boxes and other election matters	P30,000.00
Total for sundry expenses.....	P30,000.00
Total for the House Electoral Tribunal	P30,000.00

F.—DEPARTMENT OF JUSTICE

H.—SUNDRY EXPENSES

1. Additional appropriation for consumption of supplies and materials, for the Bureau of Prisons.....	P393,000.00
2. Additional appropriation for the Bureau of Immigration, as follows:	
(a) Freight, express and delivery service	P850.00
(b) Postal, telegraph, telephone and cable service	2,500.00

(c) Illumination and power service	500.00	
(d) Consumption of supplies and materials	6,000.00	
(e) Traveling expenses of persons not government employees, including subsistence and lodging of detainees	23,000.00	32,850.00
Total for the Department of Justice..		<u><u>P425,850.00</u></u>

L.—DEPARTMENT OF HEALTH

II.—SUNDRY EXPENSES

1. Additional appropriation for consumption of supplies and materials, including subsistence of patients confined in hospitals and leprosaria under the Bureau of Hospitals	P300,000.00
Total for the Department of Health..	<u><u>P300,000.00</u></u>
Total for Ordinary Expenditures.....	<u><u>P755,850.00</u></u>

EXTRAORDINARY EXPENDITURES

K.—DEPARTMENT OF NATIONAL DEFENSE

SPECIAL PURPOSES

1. Additional appropriations for expenses of the Philippine Veterans Board in carrying out the purposes of Republic Act No. 65, providing for a Bill of Rights for officers and enlisted men of the Philippine Army and of recognized or deserving guerrilla organizations, and veterans of the Philippine Revolutions, etc.	P10,000,000.00
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SPECIAL EXPENSES

(a) Payment of pensions to veterans, widows, minor children and indigent parents of deceased veterans	P7,000,000.00
(b) Payment of educational benefits	P2,950,000.00
(c) Emergency employees	P50,000.00
Total	<u><u>P10,000,000.00</u></u>

2. For expenses to cover the cost and transportation charges of rice and soap sent to Korea for consumption and use of the members of the United Nations Armed Forces as contribution of the Philippine Government to the United Nations.....	<u>2,480,000.00</u>
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Total for the Department of National Defense	<u><u>P12,480,000.00</u></u>
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Total for Extraordinary Expenditures	₱12,480,000.00
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Total for Ordinary and Extraordinary Expenditures	₱13,235,850.00
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SPECIAL PROVISION

1. The provisions of Republic Act No. 573, notwithstanding, any savings in the appropriations authorized in the said Act may be used to pay the cost and transportation charges of commodities sent to Korea for consumption of the United Nations Armed Forces as contribution of the Philippine Government to the United Nations.

SEC. 2. This Act shall take effect as of July first, nineteen hundred and fifty.

Approved, June 5, 1951.

H. No. 2054

[REPUBLIC ACT NO. 629]

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A CONCURRENT PHILIPPINE CONSULATE IN SINGAPORE, FEDERATION OF MALAYA, BRITISH NORTH BORNEO, SARAWAK AND BRUNEI, WITH MAIN OFFICE IN SINGAPORE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sums are hereby authorized to be appropriated for the operation and maintenance of the Concurrent Philippine Consulate in Singapore, Federation of Malaya, British North Borneo, Sarawak, and Brunei, with main office in Singapore:

D.—DEPARTMENT OF FOREIGN AFFAIRS

SALARIES AND WAGES

1. One foreign affairs officer, class III	₱5,400.00
Supplementary salary	2,700.00
Living quarters allowance	3,900.00
Post allowance	2,100.00
2. One clerk stenographer	1,920.00
Supplementary salary	1,680.00
3. For weekly wages of local help to serve in such capacities as interpreter, chauffeur, messenger, janitor and laborer	2,000.00
Total for salaries and wages	₱19,700.00

SUNDRY EXPENSES

1. Traveling expenses of personnel	₱1,500.00
2. Freight, express and delivery service	500.00
3. Postal, telegraph, telephone, cable and radio service	500.00
4. Illumination and power service	200.00
5. Rental of buildings and grounds	3,600.00
6. Consumption of supplies and materials	1,500.00
7. Printing and binding reports, documents and publications	100.00

8. Maintenance and repair of equipment	400.00
9. Other services	600.00

Total for sundry expenses	<u><u>P8,900.00</u></u>
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SPECIAL EXPENSES

1. For representation expenses	P2,000.00
2. For initial (organization) traveling expenses in proceeding to post, including shipment of equipment and supplies	P4,000.00

Total for special expenses	<u><u>P6,000.00</u></u>
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Total for the Concurrent Philippine Consulate in Singapore, Federation of Malaya, British North Borneo, Sarawak and Brunei with main office in Singapore	<u><u>P34,600.00</u></u>
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SEC. 2. The establishment of a Philippine Consulate in British North Borneo shall not be deemed to be a waiver of the claim of the heirs of the Sultan of Sulu or the Philippine Government to that territory.

SEC. 3. The general provisions of the Appropriation Act for the fiscal year nineteen hundred and fifty-two including the special provisions pertaining to the Department of Foreign Affairs, shall apply to the appropriations herein authorized.

SEC. 4. This Act shall take effect on July first, nineteen hundred and fifty-one.

Approved, June 5, 1951.

H. No. 2147

[REPUBLIC ACT No. 630]

AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE WAGE ADMINISTRATION SERVICE UNDER THE DEPARTMENT OF LABOR CREATED IN REPUBLIC ACT NUMBERED SIX HUNDRED AND TWO DURING THE PERIOD FROM MAY FIRST, NINETEEN HUNDRED AND FIFTY-ONE TO JUNE THIRTIETH, NINETEEN HUNDRED AND FIFTY-TWO, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. There is hereby appropriated out of any funds in the Philippine Treasury not otherwise appropriated the sum of three hundred and fifty thousand pesos for the operation of the Wage Administration Service under the Department of Labor created in Republic Act Numbered Six hundred and two during the period from May first, nineteen hundred and fifty-one to June thirtieth, nineteen hundred and fifty-two, said sum to be expended subject to the provisions of section seven, paragraph I (4), of Commonwealth Act Numbered Two hundred and forty-six, commonly known as the Budget Act, as amended. The above appropriation or so much thereof as may be necessary

beginning with the fiscal year nineteen hundred and fifty-three shall be included in the annual General Appropriation Acts.

SEC. 2. This Act shall take effect as of May first, nineteen hundred and fifty-one.

Approved, June 5, 1951.

H. No. 1837

[REPUBLIC ACT No. 631]

AN ACT CREATING THE MUNICIPALITY OF MAGALLON IN THE PROVINCE OF NEGROS OCCIDENTAL.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Magallon, Odiong and Guinpanaan are hereby separated from the Municipality of Isabela and constituted into a new municipality, to be known as the Municipality of Magallon, Province of Negros Occidental, with the seat of government in the present site of the *población* of Magallon.

SEC. 2. The boundary line between the Municipality of Magallon and the Municipality of Isabela shall be as surveyed by the Bureau of Lands in accordance with Resolution No. 1 of the joint session of the Provincial Board of Negros Occidental and the Municipal Council of Isabela dated November 15, 1949, and subsequently concurred to by Resolution No. 79 of the Municipal Council of Isabela dated December 26, 1949.

SEC. 3. The first municipal mayor, vice-mayor and councilors of the newly created municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have qualified.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 6, 1951.

S. No. 267

[REPUBLIC ACT No. 632]

AN ACT CREATING THE "PHILIPPINE SUGAR INSTITUTE", PRESCRIBING ITS POWERS, FUNCTIONS AND DUTIES, AND PROVIDING FOR THE RAISING OF THE NECESSARY FUNDS FOR ITS OPERATION.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I. *Establishment and Objectives*

SECTION 1. *Name, Duration and Domicile.*—A semi-public corporation is hereby created which shall be known as the "Philippine Sugar Institute," hereinafter called the "PHILSUGIN," which shall be organized within sixty days after the approval of this Act. It shall exist for a term of fifty years from the date of the approval of this Act and shall have its main office in the City of

Manila, and such branches and agencies within or outside the Philippines, as may be necessary for the proper conduct of its business. This Corporation shall be under supervision of the Administrator of Economic Coordination.

SEC. 2. *Purposes and Objectives.*—The PHILSUGIN shall have the following purposes and objectives:

(a) To conduct research work for the sugar industry in all its phases, either agricultural or industrial, for the purpose of introducing into the sugar industry such practices or processes that will reduce the cost of production, increase and improve the industrialization of the by-products of sugar cane, and achieve greater efficiency in the industry;

(b) To improve existing methods of raising sugar cane and of sugar manufacturing;

(c) To insure a permanent, sufficient and balanced production of sugar and its by-products for local consumption and exportation;

(d) To establish and maintain such balanced relation between production and consumption of sugar and its by-products, and such marketing conditions therefor, as will insure stabilized prices at a level sufficient to cover the cost of production plus a reasonable profit;

(e) To promote the effective merchandising of sugar and its by-products in the domestic and foreign markets so that those engaged in the sugar industry will be placed on a basis of economic security; and

(f) To improve the living and economic conditions of laborers engaged in the sugar industry by the gradual and effective correction of the inequalities existing in the industry.

CHAPTER II. *Powers*

SEC. 3. *Specific and General Powers.*—For carrying out the purposes mentioned in the preceding section, the PHILSUGIN shall have the following powers:

(a) To establish, keep, maintain and operate, or help establish, keep, maintain, and operate one central experiment station and such number of regional experiment stations in any part of the Philippines as may be necessary to undertake extensive research in sugar cane culture and manufacture, including studies as to the feasibility of mechanizing sugar cane farms, the control and eradication of pests, the selection and propagation of high-yielding varieties of sugar cane suited to Philippine climatic conditions, and such other pertinent studies as will be useful in adjusting the sugar industry to a position independent of existing trade preference in the American market;

(b) To purchase such machinery, materials, equipment and supplies as may be necessary to prosecute successfully such researches and experimental work;

(c) To explore and expand the domestic and foreign markets for sugar and its by-products to assure mutual benefits to consumers and producers, and to promote and maintain a sufficient general production of sugar and its by-products by an efficient coordination of the component elements of the sugar industry of the country;

(d) To buy, sell, assign, own, operate, rent or lease, subject to existing laws, machineries, equipment, materials, merchant vessels, rails, railroad lines, and any other means

of transportation, warehouses, buildings, and any other equipment and material for the production, manufacture, handling, transportation and warehousing of sugar and its by-products;

(e) To grant loans, on reasonable terms, to planters when it deems such loans advisable;

(f) To enter, make and execute contracts of any kind as may be necessary or incidental to the attainment of its purposes with any person, firm, or public or private corporation, with the Government of the Philippines or of the United States, of any state, territory or persons therefor or with any foreign government and, in general, to do everything directly or indirectly necessary or incidental to, or in furtherance of, the purposes of the corporation;

(g) To do all such other things, transact all such business and perform such functions directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the corporation; and

(h) Generally, to exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Act.

CHAPTER III. *Governing Body*

SEC. 4. *Composition and Appointment.*—All corporate powers of the PHILSUGIN shall be vested in, and exercised by, a board of directors consisting of five (5) members to be appointed by the President of the Philippines with the consent of the Commission on Appointments; *Provided, however,* That three of the members of the said Board shall be appointed upon the recommendation of the National Federation of Sugar Cane Planters and two, upon the recommendation of the Philippine Sugar Association. The Chairman of the Board shall be elected by the members from among themselves.

SEC. 5. *Tenure and Compensation.*—The members of the Board shall serve as designated by the President of the Philippines in their respective appointments for terms of one, two, and three years, respectively, from the date they qualify and assume office, but their successors shall be appointed for a term of three years, except that any person chosen to fill a vacancy shall serve only for the unexpired term of the member whom he succeeds. For actual attendance at meetings, each director shall receive a per diem of twenty-five pesos.

SEC. 6. *Powers and duties of the Board of Directors.*—The Board of Directors shall have the following powers and duties:

(a) To prescribe, amend, modify, or repeal by-laws, rules and regulations, not inconsistent with the provisions of this Act, governing the manner in which the general business of the corporation may be exercised, subject to the approval of the Administrator of Economic Coordination;

(b) To appoint and fix the compensation of the General Manager, subject to the approval of the President of the Philippines, and to appoint and fix the compensation of the other officers of the corporation, with the approval of the Administrator of Economic Coordination. The Board by a majority vote of all the members, may, for just cause, and, with the approval of the President of the Philippines, suspend or remove the General Manager;

(c) To approve the annual and/or such supplemental budgets of the corporation which may be submitted to it by the General Manager from time to time; and

(d) To perform such other duties as may be assigned to it by the President of the Philippines or by the Administrator of Economic Coordination.

SEC. 7. *Suspension and Removal of Directors.*—Any member of the Board of Directors may, for cause, be suspended or removed by the President of the Philippines solely or upon the recommendation of the Administrator of Economic Coordination.

SEC. 8. *Prohibition for Board Members.*—No chairman or member of the Board of Directors of a corporation shall at the same time serve in the corporation in any capacity whatsoever other than as chairman or member thereof, unless otherwise authorized by the President.

CHAPTER IV. *Management*

SEC. 9. *Managing Head.*—The management of the corporation shall be vested in the General Manager.

SEC. 10. *Powers and Duties of the General Manager.*—The General Manager shall have the following powers and duties:

(a) To direct and manage the affairs and business of the corporation, on behalf of the Board of Directors, and subject to its control and supervision;

(b) To sit in all meetings of the Board of Directors, and participate in its deliberations, but without the right to vote;

(c) To submit within sixty (60) days after the close of each fiscal year an annual report, through the Board of Directors, to the Administrator of Economic Coordination;

(d) To appoint and fix the number and salaries, with the approval of the Board of Directors, of such subordinate personnel as may be necessary for the proper discharge of the duties and functions of the corporation, and, with the approval of the Board, to remove, suspend, or otherwise discipline, for just cause, any subordinate employee of the corporation; and

(e) To perform such other duties as may be assigned to him by the Board of Directors from time to time.

CHAPTER V. *Appointments and Promotions; Civil Service Law Application*

SEC. 11. *Basis.*—In the appointment and promotion of officers and employees, merit and efficiency shall serve as basis, and no political test or qualification shall be prescribed and considered for such appointments or promotions. Any person appointed by the Board or by the General Manager, in violation of this prohibition, shall be removed from office by the Administrator of Economic Coordination.

SEC. 12. *Application of Civil Service Law and Regulations.*—All officers and employees of the corporation shall be subject to the Civil Service Law, rules and regulations, except those whose positions may, upon recommendation of the Board of Directors, be declared by the President of the Philippines as policy-determining, primarily confidential or technical in nature.

CHAPTER VI. *Audit*

SEC. 13. *Personnel*.—The Auditor General shall appoint a representative who shall be the Auditor of the corporation, and the necessary personnel to assist said representative in the performance of his duties. The number and salaries of the Auditor and said personnel shall be determined by the Auditor General, with the advice of the Board of Directors. In case of disagreement, the matter should be submitted to the President of the Philippines whose decision shall be final. Said salaries and all other expenses of maintaining the Auditor's office shall be paid by the corporation.

SEC. 14. *Report*.—The financial transactions of the PHILSUGIN shall be audited in accordance with Law, administrative regulations, and the principles and procedures applicable to commercial corporate transactions. A report of audit for each fiscal year, by the Auditor, through the Auditor General, to the Board of Directors of the corporation, and copies thereof shall be furnished the President of the Philippines, the Administrator of Economic Coordination and the Presiding Officers of the two Houses of Congress. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds; and such comments and information as may be necessary, together with such recommendations with respect thereto as may be advisable including a report of any impairment of capital noted in the audit. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of audit which, in the opinion of the Auditor, has been carried on or made without authority of law.

CHAPTER VII. *Capitalization and special fund of the corporation*

SEC. 15. *Capitalization*.—To raise the necessary funds to carry out the provisions of this Act and the purposes of the corporation, there shall be levied on the annual sugar production a tax of ten centavos per picul of sugar to be collected for a period of five years beginning the crop year 1951–1952. The amount shall be borne by the sugar cane planters and the sugar centrals in the proportion of their corresponding milling share, and said levy shall constitute a lien on their sugar quedans and/or warehouse receipts.

SEC. 16. *Special Fund*.—The proceeds of the foregoing levy shall be set aside to constitute a special fund to be known as the "Sugar Research and Stabilization Fund," which shall be available exclusively for the use of the corporation. All the income and receipts derived from the special fund herein created shall accrue to, and form part of, the said fund to be available solely for the use of the corporation.

CHAPTER VIII. *Liquidation*

SEC. 17. *Liquidation*.—When its term or period of existence has expired in accordance with the provisions of this Act, it shall, nevertheless, continue as a body corporate

for three (3) years after the time of its dissolution for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its properties, but not for the purpose of continuing the business for which it was established. In order to carry out its liquidation, upon the dissolution of the corporation, a Board of Liquidators shall be appointed by the President to take charge of winding up its corporate affairs and effecting its liquidation, subject to the supervision and control of the Administrator of Economic Coordination.

SEC. 18. *Reversion to General Funds*.—All funds resulting from the dissolution and liquidation of the corporation as herein provided shall revert to the General funds of the Government.

CHAPTER IX. *Miscellaneous Provisions*

SEC. 19. *Applicability of the Corporation Law*.—The provisions of the Corporation Law which are not inconsistent with the provisions of this Act, shall be applicable to the corporation created hereunder.

SEC. 20. *Repeal or Modification*.—All Acts, Executive Orders, Administrative Orders, and Proclamations or parts thereof inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

SEC. 21. *Constitutionality*.—If any provision of this Act shall be held unconstitutional, the other provisions shall not thereby be affected.

SEC. 22. *Effectivity*.—This Act shall take effect upon its approval.

Approved, June 6, 1951.

H. No. 1595

[REPUBLIC ACT No. 633]

AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF ANTATET IN THE PROVINCE OF ISABELA TO LUNA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The name of the municipality of Antatet, Province of Isabela, is hereby changed to Luna.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1951.

H. No. 1009

[REPUBLIC ACT No. 634]

AN ACT ADOPTING THE HONORABLE MILLARD E. TYDINGS, UNITED STATES SENATOR FROM MARYLAND AND THE HONORABLE JOHN McDUFFIE, FORMER MEMBER OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES FROM THE FIRST DISTRICT OF ALABAMA, AS SONS OF THE PHILIPPINES, AND CONFERRING UPON THEM ALL THE RIGHTS,

PRIVILEGES AND PREROGATIVES OF PHILIPPINE CITIZENSHIP.

WHEREAS, the Honorable Millard E. Tydings, United States Senator from Maryland and the Honorable John McDuffie, former Member of the House of Representatives of the United States from the First District of Alabama, were the authors of the Act of the Congress of the United States of March 24, 1934, otherwise known as the Philippine Independence Act; and

WHEREAS, for their unselfish service to human liberty and to the Filipino people, it is but proper that the Second Congress of the Republic of the Philippines, representing the Filipino people, should express the gratitude of said people to the Fathers of their independence by adopting them as sons of the Philippines and by conferring upon them all the rights, privileges, and prerogatives of Philippine citizenship; Now therefore,

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The Honorable Millard E. Tydings, United States Senator from Maryland and the Honorable John McDuffie, former Member of the House of Representatives of the United States from the First District of Alabama, are hereby adopted as sons of the Philippines and conferred all the rights, privileges, and prerogatives of Philippine citizenship.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 8, 1951.

S. No. 42

[REPUBLIC ACT No. 635]

AN ACT TO AMEND PARAGRAPHS NUMBERED TWO AND THREE OF SUBSECTION (a) OF SECTION FIVE, THE LAST PARAGRAPH OF SECTION EIGHT, THE LAST PARAGRAPH OF SECTION TWELVE, THE FIRST PARAGRAPH OF SECTION THIRTY-FIVE, AND SECTION FORTY-TWO OF COMMONWEALTH ACT NUMBERED EIGHTY-THREE, ENTITLED "AN ACT TO REGULATE THE SALE OF SECURITIES, TO CREATE SECURITIES AND EXCHANGE COMMISSION, TO ENFORCE THE PROVISIONS OF THE SAME, AND TO APPROPRIATE FUNDS THEREFOR."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraphs numbered two and three of subsection (a) of section five of Commonwealth Act Numbered Eighty-three are hereby amended to read as follows:

"2. Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency of said Government, or by any of its public instrumentalities, or by any person controlled or supervised by, and acting as an instrumentality of said Government, or any certificate of deposit for any of the foregoing; of any security issued or guaranteed by any banking institution

authorized to do business in the Philippines, the business of which is substantially confined to banking, and is supervised by the Bureau of Banking."

"3. Any security issued or guaranteed by any foreign government with which the Philippines is, at the time of the sale or offer of sale thereof, maintaining diplomatic relations, or by any state, province or political subdivision thereof having the power of taxation or assessment, which security is recognized at the time it is offered for sale in the Philippines as a valid obligation by such foreign government or by such state, province or political subdivision thereof issuing the same."

SEC. 2. The last paragraph of section eight of Commonwealth Act Numbered Eighty-three is hereby amended to read as follows:

"SEC. 8. *Suspension of registration.*—

* * * * *

"In the event of the entry of such order of suspension, the Commission shall give a prompt hearing to the parties interested. If upon such hearing, the Commission shall determine that the sale of any such security should be revoked on any ground specified in section twelve, it shall enter a final order prohibiting sales of such security, with its findings with respect thereto. Until the entry of such final order, the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. Appeals from such final order may be taken to the Supreme Court in the manner provided in this Act. If, however, upon such hearing the Commission shall find that the sale of the security will neither be fraudulent nor result in fraud, it shall forthwith enter an order revoking such order of suspension, and such security shall be restored to its status as a security registered under this Act, as of the date of such order of suspension."

SEC. 3. The last paragraph of section twelve of Commonwealth Act Numbered Eighty-three is hereby amended to read as follows:

"SEC. 12. *Revocation of registration of securities and of license to sell.*—* * *

"Before such order is made final, the issuer or dealer shall be entitled to a hearing; and such order may, be appealed to the Supreme Court in the manner provided in this Act.

SEC. 4. The first paragraph of section thirty-five of Commonwealth Act Numbered Eighty-three is hereby amended to read as follows:

"SEC. 35. *Court review of orders.*—(a) Any person aggrieved by an order issued by the Commission in a proceeding under this Act to which such person is a party or who may be affected thereby may obtain a review of such order in the Supreme Court of the Philippines by filing in such court within thirty days after the entry of such order a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Commission, and thereupon the Commission shall certify

and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript, such court shall have exclusive jurisdiction to affirm, modify, and enforce or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered unless such objection shall have been urged before the Commission, provided that opportunity therefor has been afforded. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of the original order."

SEC. 5. Section forty-two of Commonwealth Act Numbered Eighty-three is hereby amended to read as follows:

"SEC. 42. *Repealing clause.*—All acts or parts of acts inconsistent with this Act, including the whole of Act Numbered Two thousand five hundred and eighty-one, otherwise known as the 'Blue Sky Law,' are hereby repealed."

SEC. 6. This Act shall take effect upon its approval.

Approved, June 9, 1951.

S. No. 90

[REPUBLIC ACT No. 636]

AN ACT TO AMEND SECTION NUMBERED TWENTY-FOUR OF RULE NUMBERED ONE HUNDRED AND TWENTY-SEVEN OF THE RULES OF COURT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section numbered twenty-four of Rule Numbered One hundred and twenty-seven of the Rules of Court is hereby amended to read as follows:

"SEC. 24. *Change of attorneys.*—An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in Court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of such substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

"A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be

entitled to recover from the client the full compensation stipulated in the contract. For the payment of such compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuant of such judgments, rendered in the case wherein his services had been retained by the client."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 9, 1951.

H. No. 1143

[REPUBLIC ACT No. 637]

AN ACT TO AMEND SECTIONS TEN, FIFTEEN, SIXTEEN, FIFTY-FIVE, FIFTY-SEVEN, FIFTY-EIGHT, FIFTY-NINE, SIXTY, AND SEVENTY-EIGHT OF, AND TO ADD NEW SECTIONS TWENTY-SEVEN-A, AND FORTY-ONE-A TO REPUBLIC ACT NUMBERED ONE-HUNDRED AND SIXTY-FIVE, ENTITLED "AN ACT CREATING A PATENT OFFICE, PRESCRIBING ITS POWERS AND DUTIES, REGULATING THE ISSUANCE OF PATENTS, AND APPROPRIATING FUNDS THEREFOR."

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section ten of Republic Act Numbered One hundred and sixty-five is hereby amended so as to read as follows:

"SEC. 10. *Right to patent.*—The right to the patent belongs to the first true and actual inventor, his heirs, legal representatives, or assigns. If two or more persons have an invention jointly, the right to the patent belongs to them jointly. If two or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who is the first to file an application for such invention, unless it is shown that the second to file an application was the original and first inventor.

"Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, he shall give notice thereof to the applications, or applicant and patentee, as the case may be, and shall proceed to determine the question of priority of invention. And upon termination of the interference proceedings, the Director may issue a patent to the party who is adjudged the prior inventor."

SEC. 2. Section fifteen of Republic Act Numbered One hundred and sixty-five is hereby amended so as to read as follows:

"SEC. 15. *Applications previously filed abroad.*—An application for patent for an invention filed in this country by any person who has previously regularly filed an application for a patent for the same invention in a foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the Philippines, shall have the same force and effect as the same application would have if filed in this country on the date on which the application

for patent for the same invention was first filed in such foreign country: *Provided*, That the application in this country is filed within twelve months from the earliest date on which any such foreign application was filed, and a certified copy of the foreign application together with a translation thereof into English, if not in the English language, is filed within six months from the date of filing in the Philippines, unless the Director for good cause shown shall extend the time for filing such certified copy: *And provided, further*, That no patent shall be granted on an application for patent for an invention which had been patented or described in a printed publication in this or any foreign country more than one year before the date of the actual filing of the application in this country, or which had been in public use or sale in this country for more than one year prior to such filing."

SEC. 3. Section sixteen of Republic Act Numbered One hundred and sixty-five is hereby amended so as to read as follows:

"SEC. 16. *Examination of the application.*—When an application for patent has been filed, the Director shall cause to be determined whether it complies with the formal requirements and with the requirements of Chapter II of this Act. If the application is defective in any respect, the applicant shall be notified of the specific defects and a time fixed, not less than four months, within which such defects may be remedied.

"Whenever, on examination, any claim for a patent is rejected, the Director shall cause the applicant to be notified thereof, giving him briefly the reasons for such rejection, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, the applicant persists in his claim for a patent, with or without altering his specifications, the Director shall order a reexamination of the case.

"No amendment for the first time presenting or asserting a claim which is the same as, or for substantially the same subject matter as, a claim of an issued patent may be made in any application unless such amendment is filed within one year from the date on which said patent was granted.

"If the applicant fails to request reconsideration of any adverse action or decision of the Patent Office, or to remedy the defects indicated to him by the Office within the time fixed by the Director, or within such additional time, not exceeding four months, as may be granted, the application shall be denied."

SEC. 4. Republic Act Numbered One hundred and sixty-five is hereby amended by adding a new section immediately after section twenty-seven thereof, to read as follows:

"SEC. 27-A. Whenever any patent is wholly or partly, inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention more than he had a right to claim as new, if the error has arisen by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, the Director shall, on the surrender of such patent and the payment of a filing fee of one hundred pesos, cause a patent for the same invention, and in accordance with the

corrected specification, to be reissued to the patentee or to his assigns or legal representatives, for the unexpired part of the term of the original patent. Such surrender shall take effect upon the issue of the reissued patent, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent to the extent that its claims are identical with the original patent shall constitute a continuation thereof and have effect continuously from the date of the original patent. The Director may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of fifty pesos for a reissue for each of such reissued letters patent. The specifications and claims in every such case shall be subject to revision and restriction in the same manner as original applications are. Every patent so reissued, together with the corrected specifications, shall have the same effect and operation in law, on the trial of all actions for causes thereafter arising, as if the same had been originally filed in such corrected form; but no new matter shall be introduced into the specification, nor in the case of a machine patent shall the model or drawings be amended, except each by the other; but when there is neither model nor drawing, amendments may be made upon proof satisfactory to the Director that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid."

SEC. 5. A new section is hereby added to Republic Act Numbered One hundred and sixty-five, immediately before section forty-two, to read as follows:

"SEC. 41-A. Any foreign corporation or juristic person to which a patent for an invention or design has been granted or assigned under this Act may bring an action for infringement hereunder, whether or not it has been duly licensed to do business in the Philippines under the Corporation Law at the time it brings the complaint: *Provided*, That the country of which the said foreign corporation or juristic person is a citizen, or in which it is domiciled, by treaty, convention, or law, grants a similar privilege to corporate or juristic citizens of the Philippines."

SEC. 6. Sections fifty-five, fifty-seven, fifty-eight, fifty-nine and sixty of Republic Act Numbered One hundred and sixty-five are hereby amended to read as follows:

"SEC. 55. *Industrial designs*.—Any new and original creation relating to the features of shape, pattern, configuration, ornamentation, or artistic appearance of an article or industrial product may be protected by a patent for industrial design by the author in the same manner and subject to the same provisions and requirements as relate to patents for inventions in so far as they are applicable, except as otherwise hereinafter provided.

"SEC. 57. *Notice of grant of patent shall be published*.—Notice of the grant of a design patent shall be published in the *Official Gazette*.

"SEC. 58. *Term and extension thereof*.—The term of the design patent shall be five years from the date of the grant thereof.

"Before the expiration of the five-year term, upon payment of the required fee, or within a further time thereafter not to exceed six months upon payment of the surcharge, the owner of the design patent may apply for an extension for an additional five years. The application for extension must be accompanied by an affidavit showing that the design is in commercial or industrial use in the Philippines or satisfactorily explaining non-use. In a similar manner an extension for a third five-year period may be obtained.

"SEC. 59. *Marking*.—The Marking required by section forty-four, Chapter X, hereof, shall be 'Philippine Design Patent,' or appropriate abbreviation, and the number of the patent.

"SEC. 60. *Infringement*.—Infringement of a design patent shall consist in unauthorized copying of the patented design for the purpose of trade or industry in the article or product and in the making, using, or selling of the article or product copying the patented design. Identity or substantial identity with the patented design shall constitute evidence of copying."

SEC. 7. Section seventy-eight of Republic Act Numbered One hundred and sixty-five is hereby amended to read as follows:

"SEC. 78. *Rules and regulations*.—The Director, subject to the approval of the Department Head, shall promulgate the necessary rules and regulations, not inconsistent with law, for the conduct of all business in the Patent Office.

"The Director may prescribe rules and regulations governing the recognition of attorneys, agents, or other persons representing applicants or other parties before his office in patent and trademark cases, and may require such persons, attorneys or agents, before being recognized as representatives of applicants or other persons, that they shall show that they are of good moral character and in good repute, are possessed of the necessary qualifications to enable them to render to applicants or other persons valuable service, and are likewise competent to advise and assist applicants or other persons in the presentation or prosecution of their applications or other business before the Office. And the Director of Patents may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before his office any person, attorney, or agent shown to be incompetent or disreputable, or guilty of gross misconduct, or gross discourtesy or disrespect towards any Patent Office official or examiner while the latter is in the discharge of his official duty, or who refuses to comply with the rules and regulations of the Patent Office, or who shall, with intent to defraud in any manner, deceive, mislead, or threaten any applicant or prospective applicant or other person having immediate or prospective business before the office, by word, circular, letter, or by advertising. The reasons for any such suspension or exclusion shall be duly recorded. And the action of the director may be reviewed upon the petition of the person so refused recognition or so suspended or excluded by the Supreme Court under such conditions and upon such proceedings as the said Court may by its rules determine.

"It shall be unlawful for any person who has not been duly recognized to practice before the Patent Office in accordance with the provisions of this section and the rules of practice before the Patent Office to hold himself out or knowingly permit himself to be held out as a patent or trademark solicitor, patent or trademark agent, or patent or trademark attorney, or otherwise in any manner hold himself out, either directly or indirectly, as authorized to represent applicants for patent or trademark in their business before the patent office, and it shall be unlawful for any person who has, under the authority of this section, been disbarred or excluded from practice before the Patent Office, and has not been reinstated, to hold himself out in any manner whatever as entitled to represent or assist persons in the transaction of business before the Patent Office; and any offense against the foregoing provision shall be a misdemeanor and be punished by a fine of not less than one hundred pesos and not exceeding one thousand pesos."

SEC. 8. This Act shall take effect upon its approval.

Approved, June 9, 1951.

H. No. 1142

[REPUBLIC ACT No. 638]

AN ACT TO AMEND SECTIONS FOUR AND THIRTY-SEVEN OF, AND TO ADD NEW SECTIONS TWO-A, NINE-A, TEN-A, NINETEEN-A, AND TWENTY-ONE-A, AND NEW CHAPTERS II-A—THE PRINCIPAL REGISTER, AND IV-A—THE SUPPLEMENTAL REGISTER TO REPUBLIC ACT NUMBERED ONE HUNDRED AND SIXTY-SIX, ENTITLED "AN ACT TO PROVIDE FOR THE REGISTRATION AND PROTECTION OF TRADE-MARKS, TRADE-NAMES AND SERVICE-MARKS, DEFINING UNFAIR COMPETITION AND FALSE MARKING, AND PROVIDING REMEDIES AGAINST THE SAME AND FOR OTHER PURPOSES".

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section two thereof, to read as follows:

"SEC. 2-A. *Ownership of trade-marks, trade-names and service-marks; how acquired.*—Anyone who lawfully produces or deals in merchandise of any kind or who engages in any lawful business, or who renders any lawful service in commerce, by actual use thereof in manufacture or trade, in business, and in the service rendered, may appropriate to his exclusive use a trade-mark, a trade-name, or a service-mark not so appropriated by another, to distinguish his merchandise, business or service from the merchandise, business or services of others. The ownership or possession of a trade-mark, trade-name, service-mark, heretofore or hereafter appropriated, as in this section provided, shall be recognized and protected in the same manner and to the same extent as are other property rights known to the law".

SEC. 2. The following is hereby inserted between section three and section four of Republic Act Numbered One hundred and sixty-six:

“CHAPTER II—A.—*The principal register*”

SEC. 3. Section four of Republic Act Numbered One hundred and sixty-six is hereby amended to read as follows:

“SEC. 4. *Registration of trade-marks, trade-names and service-marks on the principal register.*—There is hereby established a register of trade-marks, trade-names and service-marks which shall be known as the principal register. The owner of a trade-mark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same on the principal register, unless it:

“(a) Consists of or comprises immoral, deceptive or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

“(b) Consists of or comprises the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

“(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by the written consent of the widow;

“(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or services of the applicant, to cause confusion or mistake or to deceive purchasers; or

“(e) Consists of a mark or trade-name which, when applied to or used in connection with the goods, business or services of the applicant is merely descriptive or deceptively misdescriptive of them, or when applied to or used in connection with the goods, business or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or is primarily merely a surname;

“(f) Except as expressly excluded in paragraphs (a), (b), (c) and (d) of this section, nothing herein shall prevent the registration of a mark or trade-name used by the applicant which has become distinctive of the applicant's goods, business or services. The Director may accept as *prima facie* evidence that the mark or trade-name has become distinctive, as applied to or used in connection with the applicants's goods, business or services, proof of substantially exclusive and continuous use thereof as a mark or trade-name by the applicant in connection with the sale of goods, business or services for the five years next preceding the date of the filing of the application for its registration.”

SEC. 4. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section nine thereof, to read as follows:

"SEC. 9-A. *Equitable principles to govern proceedings.*—In opposition proceedings and in all other inter parties proceedings in the patent office under this act, equitable principles of laches, estoppel, and acquiescence, where applicable, may be considered and applied".

SEC. 5. The following new section is hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section ten thereof:

"SEC. 10-A. *Interference.*—An interference is a proceeding instituted for the purpose of determining the question of priority of adoption and use of a trade-mark, trade-name, or service-mark between two or more parties claiming ownership of the same or substantially similar trade-mark, trade-name, or service-mark.

"Whenever application is made for the registration of a trade-mark, trade-name, or service-mark which so resembles a mark or trade-name previously registered by another, or for the registration of which another had previously made application, as to be likely when applied to the goods or when used in connection with the business or services of the applicant to cause confusion or mistake or to deceive purchasers, the director may declare that an interference exists.

"Upon the declaration of interference the director shall give notice to all parties and shall set the case for hearing to determine and decide the respective rights of registration.

"In an interference proceeding the director may refuse to register any or all of several interfering marks or trade-names, or may register the mark or marks or trade-name or trade-names for the person or persons entitled thereto, as the rights of the parties may be established in the proceedings."

SEC. 6. The following are hereby added to Republic Act Numbered One hundred and sixty-six, immediately after section nineteen thereof:

"CHAPTER IV-A.—*The supplemental register*

"SEC. 19-A. In addition to the principal register, the director shall keep another register to be called the supplemental register. All marks and trade-names capable of distinguishing applicant's goods or services and not registrable on the principal register herein provided, except those declared to be unregistrable under paragraphs (a), (b), (c), and (d) of section four of this Act, which have been in lawful use in commerce by the proprietor thereof, upon or in connection with any goods, business or services for the year preceding the filing of the application, may be registered on the supplemental register upon payment of a filing fee of eighty pesos for each application for one class, plus twenty pesos for each additional class, and compliance with the provisions of section five of this Act so far as they are applicable.

"Upon the filing of an application for registration on the supplemental register and payment of the fee herein provided the director shall cause an examination of the application to be made and, if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not

entitled to registration the provisions of the last paragraph of section seven of this act shall apply.

"For the purposes of registration on the supplemental register, a mark or a trade-name may consist of any trade-mark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, or device or any combination of any of the foregoing, but such mark or trade-name must be capable of distinguishing the applicant's goods, business, or services.

"Upon a proper showing by the applicant that he has begun the lawful use of his mark or trade-name in foreign commerce and that he requires domestic registration as a basis for foreign protection of his mark or trade-name, the director may waive the requirement of a full year's use and may grant registration forthwith.

"Marks and trade-names for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the *Official Gazette*. Whenever any person believes that he is or will be damaged by the registration of a mark or trade-name on this register, he may at any time apply to the director to cancel such registration. Upon receiving the application, the director shall give notice thereof to the registrant. If it is found after a hearing that the registrant was not entitled to register the mark at the time of his application for registration thereof, or that the mark was not used by the registrant or has been abandoned, the registration shall be cancelled by the director.

"The certificates of registration for marks and trade-names registered on the supplemental register shall be conspicuously different from certificates issued for marks and trade-names registered on the principal register.

"Except as hereinabove provided, and except sections ten-A, seventeen, eighteen, nineteen, twenty and thirty-five, the provisions of this act shall govern, so far as applicable, applications for registration and registrations on the supplemental register."

SEC. 7. A new section is hereby added to Republic Act Numbered One hundred and sixty-six, just below section twenty-one thereof, to read as follows:

"SEC. 21-A. Any foreign corporation or juristic person to which a mark or trade-name has been registered or assigned under this act may bring an action hereinunder for infringement, for unfair competition, or false designation of origin and false description, whether or not it has been licensed to do business in the Philippines under Act Numbered Fourteen hundred and fifty-nine, as amended, otherwise known as the Corporation Law, at the time it brings complaint: *Provided*, That the country of which the said foreign corporation or juristic person is a citizen, or in which it is domiciled, by treaty, convention or law, grants a similar privilege to corporate or juristic persons of the Philippines."

SEC. 8. Section thirty-seven of Republic Act Numbered One hundred and sixty-six, is hereby amended by adding the following new paragraph thereto, immediately after paragraph (d) thereof:

"(e) A mark duly registered in the country of origin of the foreign applicant may be registered on the principal

register if eligible, otherwise on the supplemental register herein provided. The application thereof shall be accompanied by a certified copy of the application for or registration in the country of origin of the applicant."

SEC. 9. This Act shall take effect upon its approval.

Approved, June 11, 1951.

H. No. 1348

[REPUBLIC ACT No. 639]

AN ACT CREATING THE MUNICIPALITY OF PALANAS IN THE PROVINCE OF MASBATE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Palanas, Nipa, Nabangig, Banco, Piña, Maanahao, Salvacion, Antipolo, Malatawan, Intusan, Miabas, San Antonio, Libtong, Malibas, Sta. Cruz, Bontod and Cabil-isan, Municipality of Dimasalang, Province of Masbate, are separated from said municipality and constituted into a new municipality to be known as the Municipality of Palanas, with the seat of government at the present site of the barrio of Palanas.

SEC. 2. The first mayor, vice-mayor and councilors of the Municipality of Palanas shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and have qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 11, 1951.

H. No. 1390

[REPUBLIC ACT No. 640]

AN ACT CONSTITUTING CERTAIN CITIES INTO SEPARATE SCHOOL DIVISIONS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Any provision of existing laws to the contrary notwithstanding, every chartered city which has at least one hundred and fifty public school teachers is hereby authorized with the approval of its city council to constitute into a separate school division.

SEC. 2. The salaries of the division superintendent of schools of such city shall be in accordance with Republic Act Numbered Three hundred and twelve and those of the necessary personnel of his office shall be determined and fixed by the City Mayor with the approval of the City Council. The said salaries and the expenses for equipment, supplies, and materials for said office shall be payable from the funds of such city.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 11, 1951.

H. No. 1543

[REPUBLIC ACT NO. 641]

AN ACT CREATING THE MUNICIPALITY OF LIMBUHAN IN THE PROVINCE OF MASBATE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Limbuhán, Guindawahán, Palho, Casabangan, Salvación, Alegria, Tanke, Bundukan, Bugtong, and Cabangrayan are separated from the municipality of Cataingan, Province of Masbate, and constituted into a new municipality to be known as the Municipality of Limbuhán in said province, with the seat of government at the present site of the barrio of Limbuhán.

SEC. 2. The first mayor, vice-mayor, and councilors of the said new municipality shall be appointed by the President and shall continue to hold office until their successors shall have been elected and shall have qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 11, 1951.

H. No. 1818

[REPUBLIC ACT NO. 642]

AN ACT CREATING THE MUNICIPALITY OF BATUAN IN THE PROVINCE OF MASBATE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Batuan, Burgos, Gibraltar, Costarica, Panisihan, and Matabao are separated from the municipality of San Fernando, Province of Masbate, and constituted into a new and regular municipality to be known as the municipality of Batuan in the same province.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 11, 1951.

S. No. 159

[REPUBLIC ACT NO. 643]

AN ACT TO AMEND SECTION NINETY OF REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX, OTHERWISE KNOWN AS THE JUDICIARY ACT OF NINETEEN HUNDRED AND FORTY-EIGHT, AND SECTION ONE OF RULE NINETY-THREE OF THE RULES OF COURT IN THE PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section ninety of Republic Act Numbered Two hundred and ninety-six is hereby amended to read as follows:

“SEC. 90. *Concurrent jurisdiction to appoint guardians.*—Justices of the peace and judges of municipal courts of

chartered cities shall have concurrent jurisdiction with the courts of first instance to appoint guardians or guardians *ad litem* for persons who are incapacitated by being of minor age or mentally incapable in matters within their respective jurisdiction."

SEC. 2. Section one, Rule ninety-three of the Rules of Court in the Philippines is hereby amended to read as follows:

"SECTION 1. *Where to institute proceedings.*—Guardianship of the person or estate of a minor or incompetent shall be originally cognizable by the Court of First Instance of the province where the minor or incompetent resides, and if he resides in a foreign country, by the Court of First Instance of the province wherein his property or part thereof is situated: *Provided, however,* That the justice of the peace courts or municipal courts of chartered cities shall have concurrent jurisdiction with the court of first instance in cases where the value of the property of such minor or incompetent falls within the jurisdiction of the latter courts."

SEC. 3. The rules of procedure provided for in the Rules of Court in the Philippines shall be followed so far as their application shall be practicable in the justice of the peace courts and municipal courts of chartered cities.

SEC. 4. The provisions of laws and rules of court inconsistent with the provisions of this Act are hereby repealed.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 12, 1951.

H. No. 812

[REPUBLIC ACT No. 644]

AN ACT TO AMEND REPUBLIC ACT NUMBERED TWO HUNDRED AND NINETY-SIX AUTHORIZING THE JUSTICES OF THE PEACE AND JUDGES OF THE MUNICIPAL COURTS TO HAVE CONCURRENT JURISDICTION WITH THE COURTS OF FIRST INSTANCE ON CASES OF ADOPTION AND APPOINTMENT OF GUARDIANS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section eighty-six of Republic Act Numbered Two hundred and ninety-six is hereby amended to read as follows:

"SEC. 86. *Jurisdiction of justices of the peace and judges of municipal courts of chartered cities.*—The jurisdiction of justices of the peace and judges of municipal courts of chartered cities shall consist of:

"(a) Original jurisdiction to try criminal cases in which the offense charged has been committed within their respective territorial jurisdiction;

"(b) Original jurisdiction in civil actions arising in their respective municipalities and cities, and not exclusively cognizable by the Courts of First Instance; and

"(c) The last phrase of paragraph (e) of section forty-three of this Act, notwithstanding, justices of the peace and

judges of municipal courts shall have concurrent jurisdiction with the Courts of First Instance in the appointment of guardians and adoption cases."

SEC. 2. The second paragraph of section eighty-eight of the same Act is hereby amended to read as follows:

"The jurisdiction of a justice of the peace and judge of a municipal court shall not extend to civil actions in which the subject of litigation is not capable of pecuniary estimation, except in forcible entry and detainer cases; nor to those which involve the legality of any tax, impost, to assessment; nor to actions involving admiralty or maritime jurisdiction; nor to matters of probate, the appointment of trustees or receivers; nor to actions for annulment of marriages: *Provided, however,* That justices of the peace who are duly qualified members of the bar may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the value of which does not exceed two thousand pesos, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding declaration of real property."

SEC. 3. This Act shall take effect upon its approval.

Approved, June 12, 1951.

H. No. 2079

[REPUBLIC ACT No. 645]

AN ACT AUTHORIZING THE PRESIDENT OF THE PHILIPPINES WITHIN A PERIOD OF THREE YEARS TO APPOINT OFFICERS FROM THE RESERVE FORCE OF THE ARMED FORCES OF THE PHILIPPINES ABOVE THE GRADE OF SECOND LIEUTENANT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Notwithstanding the provisions of section four (c) of Republic Act Numbered Two hundred and ninety-one, and under such rules and regulations as the President of the Philippines may prescribe, the President, within a period of three years from the effectivity of this Act and upon recommendation of the Secretary of National Defense, is hereby authorized to appoint reserve officers into the regular force of the Armed Forces of the Philippines, the number of appointees not to exceed one hundred and fifty officers in the first year, and not to exceed fifty officers yearly, thereafter: *Provided,* That in the computation of the years of active service of any reserve officer, he shall be credited with the number of years of active service rendered after the date of appointment: *Provided, further,* That no probationary period that may be required under this Act shall extend beyond the period of effectivity of this Act.

SEC. 2. This Act shall take effect on July 1, 1952.

Approved, June 12, 1951.

S. No. 251

[REPUBLIC ACT No. 646]

AN ACT TO CONVERT THE "ORDEN DE CABALLEROS DE RIZAL" INTO A PUBLIC CORPORATION TO BE KNOWN IN ENGLISH AS "KNIGHTS OF RIZAL" AND IN SPANISH AS "ORDEN DE CABALLEROS DE RIZAL", AND TO DEFINE ITS PURPOSES AND POWERS.

WHEREAS, a civic organization known as "Orden de Caballeros de Rizal" (Knights of Rizal) was incorporated under the Corporation Law of the Philippines in the year 1916 by patriotic citizens for the following purposes:

"(a) To develop the most perfect union among the Filipinos in revering the memory of Dr. Jose Rizal;

"(b) To promote among the associated knights the spirit of patriotism and Rizalian chivalry;

"(c) To study and spread the teachings of Dr. Jose Rizal and keep ever alive his consecrated memory and to make effective his exemplary and exalted principles; and

"(d) To organize the annual festivities in honor of Dr. Rizal."

WHEREAS, there is greater need than ever for the Filipino people to propagate and to practice the teachings of Rizal;

WHEREAS, the Knights of Rizal, if officially recognized and vested with appropriate powers, would be a convenient instrumentality by which the teachings of our national hero may be propagated among our people to the end that they emulate and follow his examples; and

WHEREAS, it is necessary to grant legislative Charter to the said Knights of Rizal in order to accord official recognition to it and to enlarge its powers so that it may more fully and more effectively accomplish the laudable purposes for which it was organized: Now, therefore

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The present civic organization known as "Orden de Caballeros de Rizal" is hereby converted into a body corporate and politic with powers hereinafter specified, under the name and style KNIGHTS OF RIZAL and in Spanish as "Orden de Caballeros de Rizal" (hereinafter called the corporation). The principal office of the corporation shall be in the City of Manila, Philippines.

SEC. 2. The purposes of this corporation shall be to study the teachings of Dr. Jose Rizal, to inculcate and propagate them in and among all classes of the Filipino people, and by words and deeds to exhort our citizenry to emulate and practice the examples and teachings of our national hero; to promote among the associated knights the spirit of patriotism and Rizalian chivalry; to develop a perfect union among the Filipinos in revering the memory of Dr. Jose Rizal; and to organize and hold programs commemorative of Rizal's nativity and martyrdom.

SEC. 3. The said corporation shall have perpetual succession, with power to sue and be sued, to hold such real and personal property as shall be necessary for corporate purposes; to solicit and receive public contributions; to receive real and personal property by gift, devise, or bequest; to adopt a seal and to alter the same at pleasure; to have offices and conduct its business and affairs in the City of Manila and elsewhere; to make and adopt by-laws, rules, and regulations not inconsistent with the laws of the Philippines,

and generally to do all such acts and things (including the establishment of regulations for the election of associates and successors) as may be necessary to carry into effect the provisions of this Act and to promote the purposes of said corporation. The existing By-Laws of the "Orden de Caballeros de Rizal" insofar as they are not inconsistent with this Act shall remain in force as the By-Laws of the corporation until repealed or amended.

SEC. 4. All persons of legal age and of good moral character and reputation, who are in sympathy with the purposes of the corporation, are eligible for active membership, upon unanimous approval of the Supreme Council in *banc* of a written application therefor duly endorsed by at least two active members of the corporation.

SEC. 5. The general administration and direction of the affairs of the corporation shall be in the hands of a Supreme Council (Board of Directors) of nine members, which is hereby vested with full powers and authority to act and perform all such functions as the corporation itself may do and perform.

SEC. 6. A group of five or more persons of legal age residing in any locality outside of Manila and who are of good moral character and reputation, may associate themselves and form a chapter of the corporation upon approval of a written petition to the Supreme Council. It shall be the duty of each chapter to promote and carry out the purposes of the corporation in the locality where the chapter is organized.

SEC. 7. Any donation or contribution which from time to time may be made to the corporation by the Government or any of its subdivisions, branches, offices, agencies, or instrumentalities, or by any other person or entity, shall be expended by the Supreme Council solely to promote the purposes for which the corporation is organized.

SEC. 8. From and after the passage of this Act, it shall be unlawful for any person to falsely and fraudulently call himself as, or represent himself to be, a member of, or an agent for, the Knights of Rizal; and any person who violates any of the provisions of this Act shall be punished by imprisonment of not to exceed six months or a fine not exceeding five hundred pesos, or both, in the discretion of the court.

SEC. 9. This Act shall take effect upon its approval.

Approved, June 14, 1951.

H. No. 1129

[REPUBLIC ACT No. 647]

AN ACT TO CONVERT THE ILOCOS SUR TRADE SCHOOL IN THE MUNICIPALITY OF VIGAN, PROVINCE OF ILOCOS SUR, INTO A REGIONAL SCHOOL OF ARTS AND TRADES TO BE KNOWN AS THE NORTHERN LUZON SCHOOL OF ARTS AND TRADES AND AUTHORIZING THE APPROPRIATION OF FUNDS FOR THE PURPOSE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION. 1. The Ilocos Sur Trade School in the municipality of Vigan, Province of Ilocos Sur, is hereby converted into a regional school of arts and trades to be known as the Northern Luzon School of Arts and Trades. The said school shall be under the supervision of the Bureau of Public Schools and subject to the provisions of the School Law. Courses of collegiate and secondary levels shall be offered in the said school.

SEC. 2. The sum of three hundred thousand pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, for the expenses of the said school during the fiscal year ending June 30, 1952, including the purchase of a suitable school site. In the succeeding years the operating expenses thereof shall be included in the annual General Appropriation Acts.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 14, 1951.

H. No. 2043

[REPUBLIC ACT No. 648]

AN ACT CREATING THE SUBPROVINCE OF AURORA, WHICH SHALL COMPRISE THE MUNICIPALITIES OF BALER, CASIGURAN, DIPACULAO AND MARIA AURORA, PROVINCE OF QUEZON.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The municipalities of Baler, Casiguran, Dipaculao and Maria Aurora, and all the territories comprised therein, are constituted into a subprovince of Quezon to be known as the Subprovince of Aurora, with the seat of government in the Municipality of Baler.

SEC. 2. The provisions of sections twenty-one hundred thirty-seven, twenty-one hundred thirty-eight, twenty-one hundred thirty-nine, twenty-one hundred forty, twenty-one hundred forty-one, twenty-one hundred forty-two, and twenty-one hundred forty-three of the Administrative Code, as amended, shall apply to the Subprovince of Aurora.

SEC. 3. The lieutenant-governor of the Subprovince of Aurora shall receive a compensation of three thousand pesos *per annum*.

SEC. 4. The first lieutenant-governor of the Subprovince of Aurora shall be appointed by the President of the Philippines, and shall hold office until his successor shall have been elected in the next general elections for provincial and municipal officials and shall have qualified to said office.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 14, 1951.

H. No. 1079

[REPUBLIC ACT No. 649]

AN ACT PROVIDING FOR REVISED SALARY ALLOCATIONS AND AUTOMATIC SALARY INCREASES FOR NURSES IN THE GOVERNMENT SERVICE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. This Act may be cited as the "Government Nurses Salary Act."

SEC. 2. Any provision of existing law to the contrary notwithstanding, the minimum and maximum rates of annual salaries for nurses in the National Government service and local and provincial government service depending on the availability of funds as hereby classified shall be as follows:

<i>Position</i>	<i>Salary range</i>
1. Chief Nurse and Superintendent of Nursing School or Chief Nurse, P.H.N. Section	P3,300.00—3,720.00
2. Chief Nurse or Principal or Assistant Chief Nurse, P.H.N.	2,940.00—3,300.00
3. Assistant Chief Nurse, Assistant Principal, Dietician, Operating Room Supervisor and Nurse Supervisors in P.H.N. Section	2,580.00—2,940.00
4. Ward Supervisors, Nurse-Instructors and Nurse Supervisors in P.H.N.	2,280.00—2,580.00
5. Head Nurse or Chief Nurse of hospitals of 40 beds or less	2,040.00—2,280.00
6. General Duty Nurse or Staff Nurse in Institutional or Public Health Nursing	1,680.00—2,040.00

SEC. 3. The Secretary of Health or heads of other departments of the Government which employ nurses shall allow, free of charge, quarters and subsistence to all of nurses who are employed in institutions or hospitals who shall work not exceeding forty-eight hours a week: *Provided*, That Government nurses assigned to Public Health Nursing shall be entitled to an additional compensation of fifty pesos to sixty pesos a month in lieu of quarters, subsistence, and laundry allowance.

SEC. 4. A nurse with professional qualifications higher than the standards required for the position to which she is appointed shall be given a higher rate of entrance salary than a nurse who merely meets the standards, provided she has passed the Board Examination for Nurses and possesses the necessary civil service eligibility.

SEC. 5. The scale of salaries hereinabove provided shall become effective when the Secretary of Finance and the Auditor General shall have certified to the President that there exist available funds in the National Treasury in excess of the sums appropriated in the general appropriations law sufficient to cover the increase in salaries herein authorized.

SEC. 6. This Act shall take effect upon its approval.

Approved, June 15, 1951.

H. No. 2132

S. No. 286

[REPUBLIC ACT No. 650]

AN ACT TO REGULATE IMPORTS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. No commodity may be imported into the Philippines without an import license issued in accordance with the provisions of this Act, with the exception of the cases mentioned in section ten hereof: *Provided*, That the President of the Philippines, at any time may, by executive order, when the public welfare so demands, direct the importation of any class or kind of commodity without the need of any kind of license which directly or indirectly limits or controls importation and foreign exchange.

SEC. 2. The import license provided for in section one of this Act shall be issued by the President of the Philippines through such existing board or instrumentality of the Government as he may choose or create to assist him in the execution of this Act. No other government instrumentality or agency shall be authorized to qualify or question the validity of any license so issued. Questions of legality and interpretation of any license shall be decided exclusively by said board or instrumentality subject to appeal to the President.

SEC. 3. The President, on recommendation of the board or instrumentality provided for in section two, shall, in accordance with the provisions of this Act:

(1) Issue rules and regulations for the enforcement of this Act;

(2) Formulate policies for the granting of quota allocations and import licenses;

(3) Budget the dollars certified and made available for imports by the Central Bank of the Philippines, among commodities or groups of commodities;

(4) Delete or add items to appendix "A"; and

(5) Reduce or ban the importation of non-essential commodities and those that are already produced economically and in sufficient quantities in the Philippines, except what may be imported under section ten of this Act.

SEC. 4. In budgeting the dollars available for essential imports, dollars shall be allocated for the importation of machinery, equipments, and raw materials for essential industries which should be encouraged and protected: *Provided, however*, That in the granting of dollar exchange, first priority shall be given to any government agency which is charged with the duties and functions of stockpiling essential articles, goods, or commodities, and/or with the stabilization of prices; and to all government agencies and instrumentalities for their essential needs as approved by the Department Secretary concerned.

Second priority shall be granted the needs of bona fide producers as regards the capital equipment and raw materials needed by them to the extent that they are not produced locally in adequate quantities.

After meeting the requirements mentioned above in the preceding paragraphs, the balance of the available foreign exchange shall be distributed among business firms and bona fide importers in accordance with the rules and regulations in the allocation of quotas, in proportion to their individual average importation in the year 1949, including such reasonable allocation for bona fide new Filipino importers as would encourage them to participate in importation.

The term "producers" shall include not only producers of agricultural and industrial products, but also public utilities, hospitals, publishers, educational institutions and, in general, institutions promoting the economic development of the country.

SEC. 5. The Monetary Board of the Central Bank of the Philippines shall certify and publish, immediately upon the passage of this Act, every six months thereafter, and also at any other time as it may deem advisable, the value of foreign exchange which shall be available for imports for the corresponding period.

SEC. 6. No import license shall be issued without available foreign exchange to cover such license, with the exception of cases enumerated in section ten of this Act.

SEC. 7. Upon the presentation to the Bureau of Customs of a duly issued import license, it shall be the ministerial duty of said Bureau to allow the entry of the import items covered by such import license.

SEC. 8. Unless extended in accordance with the rules and regulations, import licenses issued under this Act and which are not used within thirty days after their issue by the opening of a letter of credit or a similar transaction shall be null and void. Import licenses are non-transferrable.

SEC. 9. Anyone who has been granted an import and corresponding foreign exchange license shall account for the investment of the latter, and, if found to have an unexpended balance, the allocation for such balance shall be cancelled. The foreign exchange corresponding to quota allocations and import licenses not used, may be the subject of new quota allocations to be issued in conformity with the rules and regulations.

SEC. 10. The following shall not be subject to import control and can be brought into Philippine jurisdiction without license:

(a) Commodities of a value not exceeding five thousand pesos (P5,000) already used in a foreign country by the person or family importing the same, and which are being imported for the personal use of the person or family importing them, as well as gifts sent from abroad through the post office, of a value not more than one hundred pesos (P100) each gift, unless there is evidence of abuse in the use of this privilege; and

(b) Commodities brought from abroad by a person who is returning to the Philippines, provided they are not being brought for commercial purposes, and do not exceed one thousand pesos (P1,000) in value, unless there is evidence of abuse in the use of this privilege.

SEC. 11. Any provisions of law to the contrary notwithstanding, import license shall be granted for the following:

(a) Commodities brought from abroad without requiring foreign exchange and imported for purposes of investment in the Philippines: *Provided*, That the proceeds from these goods shall be deposited in any bank and may not be withdrawn therefrom except upon proper showing to the depository bank that said proceeds will be invested in the Philippines.

(b) Goods imported from countries with which the Philippines has barter trade agreements, preference being given to producers who export to said countries.

SEC. 12. Quota allocations and import licenses granted in favor of an importer who is not a producer, covering essential commodities listed in Appendix "A" may be subjected by the Board of Directors of the Price Stabilization Corporation to a system of controls and rationing in its distribution, subject to such rules and regulations as may be issued by the said Board.

SEC. 13. All import licenses issued to any importer who is not a producer shall contain the condition that the importer shall reserve not less than fifty per cent of his imports for sale to bona fide Filipino merchants at the same mark-ups granted to his regular trade outlets. An importer who is unable to sell fifty per cent of his import to Filipino merchants shall apply to the President for authority to release the unused portions: *Provided*, That nothing contained in this Act shall in any way impair or abridge the rights granted to citizens and juridical entities of the United States of America under the Executive Agreement signed on July fourth, nineteen hundred and forty-six, between that country and the Republic of the Philippines.

SEC. 14. All applications for quota allocations and import licenses and all quota allocations and import licenses granted, as well as decisions, policies, rulings, orders and actions issued or taken under this Act shall be given wide publicity. The rules and regulations shall be published at least ten days before their respective dates of effectivity, giving all interested parties the opportunity within that time to present their views for consideration.

SEC. 15. The President may summarily bar firms or individuals from filing applications for import and/or from doing business in the Philippines for any of the following acts:

(1) Any material misrepresentation in any document required by this Act or any rules or regulations issued in pursuance thereto;

(2) Any violation of the provisions of this Act or any rules or regulations issued thereunder; and

(3) The payment to any public official, directly or indirectly, of any fee, premium or compensation other than those allowed by laws or regulations, in connection with the issuance or granting of quota allocations or licenses.

SEC. 16. There shall be collected on all import licenses granted a license fee of two per cent of the face value of the license, which may be used to defray the expenses of licensing. Any unexpended balance thereof shall accrue to the general funds.

SEC. 17. All valid quotas and licenses regularly approved by the previous Import Control Administration, the Import Control Board and the Price Stabilization Corporation

before the effectivity of this Act shall be recognized and given full force and effect.

SEC. 18. The penalty or fine of not less than two thousand pesos (P2,000) nor more than twenty thousand pesos (P20,000), or imprisonment of not less than two years nor more than five years, or both such fine and imprisonment at the discretion of the Court shall be imposed upon persons who may be found guilty of the following acts:

(1) Any material misrepresentation in any document required by this Act or the rules and regulations issued thereunder;

(2) Any violation of any provisions of this Act or of the rules and regulations issued in pursuance thereto by officers or employees having to do with the enforcement of the same;

(3) The receiving or accepting, by any public official or employee directly or indirectly, of fees, premiums or compensations of any kind other than those allowed by law or by the rules and regulations, for the performance of any act or service connected with the issuance of import license or quota allocation;

(4) Any violation of any provisions of this Act or of the rules and regulations issued thereunder: *Provided*, That in the case of aliens, the penalty to be imposed shall consist of the payment of the fine hereinabove provided for and that of immediate deportation without any further proceedings on the part of any Deportation Board;

Provided, further, That if the violation is committed by the manager, representative, director, agent or employee of any natural or juridical person in the interest of the latter, such violation shall render the employer amenable to the penalty corresponding to the offense, without prejudice to the imposition of the corresponding penalty, either personal or pecuniary or both, upon the manager, representative, director, agent or employee committing the violation:

Provided, furthermore, That in the case of the violation being committed by or in the interest of a foreign juridical person duly licensed to engage in business in the Philippines, the immediate revocation of such license to engage in business shall form part of the penalty to be imposed:

Provided, also, That if the act committed by a public officer or employee is penalized by any other law, the penalties prescribed in the law punishing the offense shall be imposed in addition to those prescribed herein and that of perpetual absolute disqualification:

And provided, finally, That articles, goods or commodities imported in violation of this Act shall be subject to forfeiture in accordance with the procedure established in the Revised Administrative Code, the proceedings to terminate within thirty (30) days after the importation, and under no circumstances or conditions may such goods be released to the importer without the previous approval of the President.

SEC. 19. Any sections and provisions of this Act that may be declared unconstitutional by a competent court shall not affect the remaining provisions hereof.

SEC. 20. Republic Act Numbered Four hundred and twenty-six and Executive Orders Numbered Three hundred and eighty-four and Three hundred and eighty-eight, series of 1950 and 1951, respectively, as well as any other law

or order contrary to the provisions of this Act are hereby repealed.

SEC. 21. This Act shall take effect on July 1, 1951 and continue in effect until June 30, 1953 unless sooner repealed or amended by Congress.

Approved, June 15, 1951.

APPENDIX "A"

COMPLETELY DECONTROLLED ITEMS

Rice

Flour

Tinned Fish

Sardines

Squid

Makerel

Herring

Salmon

Tinned Milk

Tinned Beef

Corned Beef

Canned Vienna Sausage

Corned Meat Spread

Frozen Beef

College Textbooks

Used clothing

Paper and other materials for books

All items decontrolled or ordered imported without limitation as to volume and value by Executive Orders promulgated before the effectivity of this Act.

ESSENTIAL ITEMS OF IMPORT

(Italicized words are classifications, not items of import)

Animal products, inedible

Hides and skins

Cattle

Other hides and skins

Leather, unmanufacture

Chamois

Sole and harness leather

Upper leather

Patent leather

Other unmanufactured leather

Leather, manufactures

Belting

Belting leather

Artificial leather

Other inedible animal products

Glues

Animal wax

Grains and preparations

Poultry feeds

Vegetable preparations and vegetables

Yeast

Rubber and manufactures

- Belts
- Beltings
- Cement (rubber)
- Heels
- Hose
- Packing and gaskets
- Sheets, crude
- Sheets, manufactured
- Sheeting and coling
- Soles, inner
- Soles, outer
- Rubber, friction tapes
- Tires

*Gums**Arabic*

- Tragacanth
- Other gums

Resins

- Camphor
- Rosen, resins
- Shellac
- Other resins and balsams
- Turpentine
- Linseed oil

Seeds and nursery stock

- Seedlings, bulbs and plants
- Onion seeds
- Other vegetable seeds
- All other seeds

Miscellaneous vegetable products

- Fodder and feeds
 - Forage crop
 - Fodder
 - Other forage crop
 - Animal feeds

*Hops**Textiles and manufactures**Cotton*

- Unmanufactured
- Raw Cotton
- Semi-manufactures
 - Waste Cotton
 - Yarns
 - Unmercerized
 - Mercerized
- Twines

Manufactures—

- Cloth
- Threads, Sewing and Crochet
 - Unbleached
 - Bleached
 - For Embroidery
 - Other
- Fabrics
- Remnants

Miscellaneous Cotton Manufactures

Beltings

Filter Cloth

Ribbon, Ink

Shoe Tops, Rubberized Fabrics

Flax or linen

Jute and other fibers

Bags

Burlaps and Baggings

Cordage

Oakum

Threads and Twines

Others

Wool and wool manufactures

Semi-manufactures

Manufactures

Woven Fabrics

Waste Wool

Hair and Manufactures

Bristles

Rayon or Other Synthetic Textiles

Manufactures of

Woven Fabrics

Cloths

Remnants

Other Manufactures

Threads

Yarns

Cork and manufactures

Stoppers

Board or in Sheets

Paper and manufactures

Unprinted

Cigarette paper

Paper for adding machine
and cash register

Printing Paper

For Books

For Newspapers

Roofing felt and sheathing

Paste board and cardboard

Wallboard

Non-metallic minerals

Natural gas

Coal and related fuel

Coal

Coke

Petroleum products

Bunker fuel oil

Diesel oil

Gasoline and other motor spirits

Naphthas—all lighter products of distillation

Kerosene

Lubricating oils

- Coal tar
- Creosote or dead oil
- Flotation oils
- Grease
- Petroleum asphalt
 - Unmanufactured
 - Other manufactures of asphalt
- Petroleum jelly (Vaseline)
- Residium and all other petroleum products from which light bodies have been distilled
- Wax, mineral and paraffin

Gypsum products

- Gypsum
- Plaster of Paris
- Sulphur
- Talc Powder (Not face powder)
- Glass and Glass Products
 - Plate glass
 - Window glass
 - Sheets glass (not plate nor window)
- Bottles, vials, jars, etc.
 - Bottles and jars
 - Ampules and vials
 - Demijohns
- Optical glass and lenses

Clay, Clay Products and other manufactures

- Chalk, crude
- China clay, kaolin
- Fire clay
- Fuller's earth
- Graphite or plumbago
- Pumice
- Silica

Manufactures

- Asbestos
 - Packing
 - Shingles and roofing
 - Textiles
 - Other asbestos

Clay, Clay Products, etc.

Manufactures

- Bricks, fire
- Emery cloth and Emery paper
- Emery sand and powder
- Emery or corundum wheels
- Grind stones
- Hones and Whetstones
- Sewer pipe and conduits

Metals and manufactures

- Iron and steel
- Semi-manufacture
 - Pig iron
 - Bar iron
 - Boiler plates
 - Steel rods or bars

Sheets, plates and hoop iron

Band Hoop Iron

Corrugated roofing

Plain, galvanized

Tin plates, terneplates and Jaggers' tin

Other galvanized

Scrap, tin plates

Steel Mill Products

Structural Iron and Steel

Angles and channels

Beams

Railroad track materials

Pre-fabricated

Structural

Casting and gorgings

Other structural

Wire and Manufacture

Barb wire

Cables and Wire ropes

Gauze

Netting, fencing and fence gates

Round wire

Bright nail wire

Roofing nails

Horseshoe nails

Except finishing nails

Spikes

Tacks, stapples, etc.

Nuts, bolts, washers and rivets

Advance Manufactures

Buckets

Chains

Horse shoes

Needles

Iron and Steel

Advance Manufactures

Tools

Augers, drills, braces, gimlets and reamers

Axes, Adz and hatchets

File and rasps

Gauges, squares and levelers

Hammers

Hoes, rakes and shovels

Planes and chisels

Pliers

Saws

Vices

Wrench

Mechanics tools not else specified

All other tools

Incubators and brooders—not electric

Heating and cooking equipments

Welding equipment (oxy-acetylene)

Butts and hinges

Locks

Pipes and Fittings

Cast iron (soil)
Steel, Black
Steel, galvanized
Screws
Tackles, pulleys

Machinery except agricultural and electrical
Printing and book binding machinery

Book binding machine
Printing, machine and parts
Typesetting machines
Typesetting machine parts

Power Generating machinery

Boilers and parts
Motor parts except electric
Stationery and marine engines
Stationery and marine engines, parts
All other engine and parts

Construction and Conveying machinery

Concrete mixers and parts
Hoisting machine
Road making machinery
Road making machinery, parts

All other machinery

Air compressors
Coffee and corn mills
Fiber stripping machine
Fiber stripping machine, parts
Logging equipment
Metal grinders
Metal working machinery and parts
Mining machinery and parts
Oil extracting machine and parts
Pumps and pumping machinery and parts
Refrigerating machinery and parts
Saw mill machinery and parts
Sewing machines
Sewing machine parts
Sugar mill and parts
Woodworking machinery and parts
All other machinery, machine and parts except lawn mowers,
ice cream freezers, and laundry machines.

Agricultural Machinery and Implements

Irrigation and other pumps

Plows, cultivators, harrows and parts
Reapers and mowers
Rice Hullers and Cleaners
Rice Hullers and Cleaners parts
Rice Threshers
Rice Threshers parts
All other agricultural machinery, implements and parts

Non-ferrous metals, except precious

Aluminum and manufactures of
Foil
Sheets, corrugated
Sheets, plain

- Antimony
- Brass and bronze
 - Bars and rods
 - Locks, hinges and bolts
- Machinery and parts
- Tacks, screws, nuts, bolts, washers and rivets
- Other builders' hardware
- Pipes and fittings
- Sheets
- Wire

Copper and manufactures

- Bars, ingots, slabs and pigs
- Tacks, screws, nuts, bolts, washers and rivets
- Pipes and fittings
- Sheets (Montz metal)
- Wire (bars)
- Wire, insulated

Lead

- Pigs, bars and sheets
- Bottle caps

Solder and babbitt metal

- Type and type metal

Mercury (quicksilver)**Nickel****Tin**

- Ingots
- Tinfoil

Zinc

- Pigs, bars and sheets
- Dusts
- Miscellaneous metal manufactures
 - Bottle, caps, tinplate
 - Cans, empty tinplate
 - Cylinders, empty
 - Drums, empty
 - Ferro, alloys
 - Ferrochrome
 - Ferrosilicon

Electrical Machinery and Appliances

- Armatures and commutators
- Batteries, flashlights
- Batteries, dry cell
- Batteries, storage or wet
- Condensing units
- Dynamos, generators and turbines
- Electrical Tools
- Incubators and brooders
- Magnets
- Motor and pumps
- Motors parts
- Transformers
- Welding equipment

Vehicles and Parts

- Tracks
- Automobiles valued not more than P3,800
- Parts and accessories
- Cars, railway, and trams and parts

Locomotives
Locomotive parts
Tractors, wheel type
Tractor, crawler type
Tractor, parts
Parts of equipment and repairs for vessels
Wagons, trailers and carts
Wheelbarrows, pushcarts and hand trucks
Axles, wheels and springs for carts
All other vehicles and parts

Chemicals, Drugs, Dyes, Medicines and Medical Equipment and Supplies

Acids
Acetic
Boric
Carbolic
Citric
Muriatic (Hydrochloric)
Nitric
Oxalic
Sulphuric
Tartaric
All other acids
Other chemicals
Anti-biotics, household remedies, proprietary medicine, etc.

Alum (sodium aluminum, sulphate)
Ammonia, anhydrous
Ammonia, aqua
Ammonia, carbonate and bicarbonate
Baking powder
Calcium carbide
Cementing preparation other than rubber
Cream of Tartar
Cyanide (potassium and sodium)
Dextrin
Disinfectant deodorants
Flavoring extracts (ajinomoto, vetsen, etc.)
Formaldehyde or formalin
Glycerine
Insecticides
Iodoform
Lime chloride (bleaching powder)
Magnesium carbonate and bicarbonate
Magnesium sulphate (Epsom salt)
Metal polishes
Oxygen gas
Potash, caustic
Potash, chlorate and perchlorate
Potassium bichromate and chromate
Potassium bromide
Saccharine
Silver nitrate
Sodium bicarbonate
Sodium carbonate
Sodium silicate
Sodium sulphate (Glauber's salt)
All other chemicals

Dental equipment, dental products and dental gold

Chemical, Drugs, etc.

Medicinal and pharmaceutical preparations

Dyes

Indigo

Aniline

Other dyes

Dyeing materials

Cutch

Other dyeing materials

Fertilizers and Fertilizing Materials

Animal and Vegetable Fertilizer

Nitrate of potash

Phosphate of ammonia

Sulphate of potash

Superphosphate

Mixed fertilizers

Other chemical fertilizers

Explosives

Blasting caps

Cartridge

Dynamite

Fuses

Gunpowder

Paints, Pigments and Vegetables

Lead, Red

Lead, White

Litharge

Lithophane

Other, Iron oxide and other mineral earth pigments

Ultramarine blue

Varnish

Zinc oxide

Linseed oil

Turpentine

Miscellaneous

Drawing instruments

Microscopes

Surveying and engineering instruments

Other scientific and laboratory instruments

Fine tools

Films

Unexposed

Sensitized paper, including photographic and photostatic paper materials for map and plan printing only

Fish hooks

Fishing rods and tackles

Time clocks

Parts of clocks and watches

Brushes

Paint

Blacking and leather dressing

Celluloid and manufactures

Sheets and strips

Cellophane and manufactures

Sheets and strips

Ink, and Ink Powder
Printers Ink
Muscilage and paste
Plastic materials other than Pyroxyline products
Beltings
Sheets and sheeting
Soling and heelings
Athletic goods not produced locally including .22 caliber target firearms and ammunition.
Jute and Hessian Bags

H. No. 970

[REPUBLIC ACT No. 651]

AN ACT GRANTING SATURNINO MENDOZA A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF MOLAVE, ZAMBOANGA.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two, and to the provisions of the Constitution, there is granted to Saturnino Mendoza, for a period of twenty-five years from the approval of this Act, the right, privilege, and authority to construct, maintain, and operate an electric light, heat, and power plant for the purpose of generating and distributing electric light, heat, and/or power for sale within the Municipality of Molave, Zamboanga: *Provided*, That the holder of the franchise herein granted shall start operation thereof within one and one-half years from the approval of said franchise if he is a new operator; and within six months if he is at present holder of a municipal franchise. Failure to comply with this requirement shall *ipso facto* cancel and void this franchise.

SEC. 2. It is expressly provided that in the event the government should desire to maintain and operate for itself the plant and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all serviceable equipment therein, at cost.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 1562

[REPUBLIC ACT No. 652]

AN ACT GRANTING TO MARANAO TELEPHONE COMPANY A FRANCHISE TO INSTALL, OPERATE, AND MAINTAIN A TELEPHONE SYSTEM IN THE PROVINCE OF LANAOS AND IN THE CITIES OF DAVANAO AND ILIGAN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subject to the conditions established in this Act and the provisions of Commonwealth Act Numbered One hundred and forty-six, as amended, and of the Constitution, applicable thereto, there is hereby granted to Ma-

ranao Telephone Company, hereinafter called the grantee, its successors or assigns, for a period of fifty years from the approval of this Act, the right and privilege to construct, maintain and operate in the Province of Lanao and in the Cities of Dansalan and Iligan a telephone system to carry on the business of the electrical transmission of conversations and signals in said province and cities. For this purpose, the grantee is hereby authorized to use all streets and public thoroughfares in the said province and cities for the construction, maintenance, and operation of all apparatus, conductors, and appliances necessary for the electrical transmission of conversations and signals, to erect poles, string wires, build conduits, lay cables, and to construct, maintain, and use such other approved and generally accepted means of electrical conduction in, on, over, or under the public roads, highways, lands, bridges, streets, lanes, and sidewalks in said province and cities, and overhead or underground lines or on the surface of the ground as may be necessary and best adapted to said transmission.

SEC. 2. All poles erected and all conduits constructed or used by the grantee shall be located in places designated by the grantee: *Provided*, That all poles erected and used by the grantee or its successors shall be of such appearance as not to disfigure the streets, and the wires and cables carried by said poles and the underground cables shall be strung and laid in accordance with professional standards approved by the Public Service Commission; and said poles shall be of such a height as to maintain the wires and cables stretched on the same at a height of at least fifteen feet above the level of the ground, and said wires and cables shall be so placed as not to imperil the public safety, in accordance with a plan approved by the Public Service Commission: *Provided, further*, That whenever twenty-five or more pairs of wires or other conductors are carried on one line of poles in any poblacion of any municipality or city in said province, said wires or conductors shall be placed in one cable, and that whenever more than eight hundred pairs of wires or other conductors are carried on one line of poles said wires or conductor, shall be placed underground by the grantee, its successors or assigns, whenever ordered to do so by the Public Service Commission.

SEC. 3. For the purpose of erecting and placing the poles or other supports of such wires or other conductors or of laying and maintaining underground said wires, cables or other conductors, it shall be lawful for the grantee, its successors or assigns to make excavations or lay conduits in any of the public places, highways, streets, alleys, lanes, avenues, sidewalks or bridges in the Province of Lanao and in the Cities of Dansalan and Iligan: *Provided, however*, That any public place, highway, street, alley, lane, avenue, sidewalk or bridge disturbed, altered or changed by reason of the erection of poles or other supports, or the laying underground of wires or other conductors, or of conduits, shall be repaired and restored to the satisfaction of the district engineer of said province or city engineers of said cities, and removing from the same all rubbish, dirt, refuse, or other material which may have been placed there or taken up in the erection of said poles or the laying of said underground conduits, leaving them in as good condition as they were before the work was done.

SEC. 4. Whenever any person has obtained permission to use any of the streets in said province and cities for the purpose of removing any building or in the prosecution of any provincial or city work or for any other cause whatsoever, making it necessary to raise or remove any of said wires or conduits which may obstruct or hinder the prosecution of said work, the said grantee, upon notice by the provincial board of the province or city council of the cities concerned, served upon said grantee at least forty-eight hours in advance, shall raise or remove any of said wires or conduits which may hinder the prosecution of such work or obstruct the removal of said building, so as to allow the free and unobstructed passage of said building and the free and unobstructed prosecution of said work, and the person or entity at whose request the wires or poles or other structures have been removed, shall pay one-half of the actual cost of replacing the poles or raising the wires and other conductors or structures. The notice shall be in the form of a resolution duly adopted by the provincial board and served upon the grantee or its duly authorized representative or agent by a person competent to testify as witness in a civil action, and in case of refusal or failure of the grantee to comply with such notice, the Provincial Governor of the province, with the proper approval of the provincial board first had or the city mayor with the proper approval of the city council first had, as the case may be, shall order such wires or conduits to be raised or removed at the expense of the grantee, for the purposes aforesaid.

SEC. 5. All apparatus and appurtenances used by the grantee, its successors or assigns shall be modern and first class in every respect and all telephone lines or installations used, maintained and operated in connection with this franchise by the grantee, its successors or assigns shall be kept and maintained at all times in a satisfactory manner, so as to render an efficient and adequate telephone service, and it shall be the further duty of said grantee, its successors or assigns, whenever required to do so by the Public Service Commission to modify, improve, and change such telephone system for the electrical transmission of conversations and signals by means of electricity in such manner and to such extent as the progress of science and improvements in the method of electrical transmission of conversations and signals by means of electricity may make reasonable and proper.

SEC. 6. The grantee, its successors or assigns, shall keep a separate account of the gross receipts of their telephone business, and shall furnish to the Auditor General and the Treasurer of the Philippines a copy of such account not later than the thirty-first day of July of each year for the twelve months preceding the first day of July.

SEC. 7. The grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings, and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay. In addition, the grantee, its successors or assigns, shall pay to the Treasurer of the Philippines each year, within ten days after the audit and approval of the accounts as prescribed in section six

of this Act, one *per centum* of all gross receipts of the telephone business transacted under this franchise by the grantee, its successors or assigns, and the said percentage shall be in lieu of all taxes on this franchise or its earnings.

SEC. 8. Within sixty days from the approval of this Act, the grantee shall file with the Public Service Commission his application for a certificate of public necessity and convenience. In case of failure to make said application within the period established, this franchise shall become null and void.

SEC. 9. The grantee shall not commence any construction whatever pursuant to this franchise without first obtaining a certificate of public necessity and convenience from the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One hundred and forty-six, as amended, specifically authorizing such construction. The grantee shall not exercise any right or privilege under this franchise without first having obtained such certificate of public necessity and convenience from the Public Service Commission. The Public Service Commission shall have the power to issue such certificate of public necessity and convenience whenever it shall, after due hearing, determine that such construction or such exercise of the rights and privileges under this franchise is necessary and proper for the public convenience, and the Commission shall have the power in so approving to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require, and such certificate shall state the date on which the grantee shall commence construction and the period within which the work shall be completed. In order to avail itself of the rights granted by such certificate of public necessity and convenience, the grantee shall file with the Public Service Commission, within such period as said Commission shall fix, its written acceptance of the terms and conditions of this franchise and of the certificate, together with the document evidencing the fact that the deposit required in section ten has been made. In the event that the grantee shall not commence the telephone service referred to in the certificate obtained and filed as herein provided within such period as the Public Service Commission shall have fixed, said Commission may declare said certificate null and void and the deposit made pursuant to section ten of this Act forfeited to the National Government unless the grantee shall have been prevented from doing so by fortuitous cause or *force majeure*, usurped or military power, martial law, riot, uprising, or other inevitable cause: *Provided, however*, That if the grantee shall have been prevented by one or more of all such causes from commencing the telephone service within the period specified, the time during which he shall have been so prevented shall be added to said period: *Provided, further*, That failure on the part of the grantee to accept the conditions of this franchise and those imposed in the certificate of public necessity and convenience shall automatically void this franchise.

SEC. 10. Upon the written acceptance of the terms and conditions of this franchise, the grantee shall deposit in the National Treasury one thousand pesos, or negotiable

bonds of the Government of the Philippines or other securities approved by the Secretary of Public Works and Communications, of the face value of one thousand pesos, as an earnest of good faith in accepting this franchise and a guaranty that, within six months from the date of the granting by the Public Service Commission of a certificate of public necessity and convenience authorizing the construction and operation by the grantee of a telephone service in the Province of Lanao and in the Cities of Dansalan and Iligan, the grantee, its successors or assigns, will be completely provided with the necessary equipment and ready to begin operation in accordance with the terms of this franchise: *Provided*, That if the deposit is made in money the same shall be deposited at interest in some interest-paying bank approved by the Secretary of Public Works and Communications, and all interest accruing and due on such deposit shall be collected by the Treasurer of the Philippines and paid to the grantee, its successors or assigns, on demand: *And provided, further*, That if the deposit made with the Treasurer of the Philippines be in negotiable bonds of the Government of the Philippines or other interest bearing securities approved by the Secretary of Public Works and Communications, the interest on such bonds or securities shall be collected by the Treasurer of the Philippines and paid over to the grantee, its successors or assigns, on demand.

Should the said grantee, its successors or assigns, for any other cause than the act of God, the public enemy, usurped or military power, martial law, riot, civil commotion, or inevitable cause, fail, refuse, or neglect to begin within twelve months from the date of the granting of said certificate of public necessity and convenience, the business of transmitting messages by telephone, or fail, refuse, or neglect to be fully equipped and ready to operate, within twelve months from the date of the granting of said certificate of public necessity and convenience, the telephone service in the Province of Lanao and in the Cities of Dansalan and Iligan applied for by the grantee according to the terms of this franchise, then the deposit prescribed by this section to be made with the Treasurer of the Philippines, whether in money, bonds, or other securities, shall become the property of the National Government as liquidated damages caused to such Government by such failure, refusal, or neglect, and thereafter no interest on said bonds or other securities deposited shall be paid to the grantee, its successors or assigns. Should the said grantee, its successors or assigns, begin the business of transmitting messages by telephone and be ready to operate according to the terms of this franchise, the telephone service in the Province of Lanao and in the Cities of Dansalan and Iligan within twelve months from the date of the granting of said certificate of public necessity and convenience, then and in that event the deposit prescribed by this section shall be returned by the National Government to the grantee, its successors or assigns, upon recommendation of the Public Service Commission, as soon as the telephone service in said province and cities applied for by the grantee has been installed in accordance with the terms of this franchise: *Provided, further*, That all the time during which the grantee, its successors or assigns, may be prevented from carrying out the terms

and conditions of this franchise by any of said causes shall be added to the time allowed by this franchise for compliance with its provisions.

SEC. 11. The books and accounts of the grantee, its successors or assigns, shall always be open to the inspection of the provincial auditor or his authorized representatives, and it shall be the duty of the grantee to submit to the Auditor General quarterly reports in duplicate showing the gross receipts and the net receipts for the quarter past and the general condition of the business.

SEC. 12. The rights herein granted shall not be exclusive, and the rights and power to grant any corporation, association, or person other than the grantee franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise: *Provided*, That the poles erected, wires strung or cables or conduits laid by virtue of any franchise for telephone, or other electrical transmission of messages and signals granted subsequent to this franchise shall be so placed as not to impair the efficient and effective transmission of conversations or signals under this franchise by means of poles erected, wires strung, or cables or conduits actually laid and in existence at the time of the granting of said subsequent franchise: *And provided, further*, That the Public Service Commission, after hearing both parties interested, may compel the grantee of this franchise or its successors or assigns, to remove, relocate, or replace his poles, wires or conduits; but in such case the reasonable cost of the removal, relocation, or replacement shall be paid by the grantee of the subsequent franchise or its successors or assigns to the grantee of this franchise or its successors or assigns.

SEC. 13. The grantee, its successors or assigns, shall hold the National, provincial, city and municipal governments harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether to property or to persons, caused by the construction or operation of the telephone or other electrical transmission system of the said grantee, its successors or assigns.

SEC. 14. The rates for the telephone service, flat rates as well as measured rates, shall be subject to the approval of the Public Service Commission.

The monthly rates for telephones having a metallic circuit within the limits of any *población* of any municipality or city in the province shall also be approved by the Public Service Commission.

SEC. 15. The grantee shall not, without the previous and explicit approval of the Congress of the Philippines, directly or indirectly, transfer, sell, or assign this franchise to any person, association, company, or corporation or other mercantile or legal entity.

SEC. 16. The grantee may install, maintain, operate, purchase or lease such telephone stations, lines, cables or system, as is, or are, convenient or essential to efficiently carry out the purpose of this franchise: *Provided, however*, That the grantee, its successors or assigns shall not, without the permission of the Public Service Commission first had, install, maintain, operate, purchase or lease such stations, lines, cables or systems.

SEC. 17. The Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin crossarm, and to install, maintain and operate wires of its telegraph system thereon: *Provided, however,* That the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Telecommunications and the grantee: *Provided, further,* That in case of disagreement as to rate of contract rental, same shall be fixed by the Public Service Commission. The Province of Lanao and the Cities of Dansalan and Iligan shall also have the privilege, without compensation, of using the poles of the grantee, to attach one standard crossarm, and to install, maintain and operate wires of a local police and fire alarm system; but the wires of such telegraph lines, police or fire alarm system shall be placed and strung in such manner as to cause no interference with or damage to the wires of the telephone service of the grantee.

SEC. 18. The grantee shall purchase the property used by the provincial government and city governments concerned for the operation of a similar service in the Province of Lanao and in the Cities of Dansalan and Iligan and the provincial government and city governments concerned shall sell said property together with all rights and privileges now enjoyed by said provincial government and city governments, at the price agreed upon by the grantee and the provincial board or city councils. In case of disagreement as to the purchase price, the Public Service Commission shall be authorized to act as referee and to determine the reasonable price at which said property shall be conveyed, after hearing both parties, and its decision shall be final.

SEC. 19. It is expressly provided that in the event the Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation.

SEC. 20. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 973

[REPUBLIC ACT No. 653]

AN ACT GRANTING TO THE CEBU PORTLAND CEMENT COMPANY A TEMPORARY PERMIT TO OPERATE AND MAINTAIN RADIOTELEPHONE STATIONS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. A temporary permit is hereby granted to the Cebu Portland Cement Company, as long as it remains a government controlled corporation, to construct, install, establish, operate, and maintain fixed point-to-point private radiotelephone stations at its plant in Tinaan, Naga, Cebu, and at its central office in Manila, subject to the provisions of existing laws and regulations.

SEC. 2. This temporary permit shall continue to be in force during the time that the Government has not established similar service at the places selected by the grantee, and is granted upon the express condition that the holder of the temporary permit herein granted shall start the operation thereof within one and a half years from the approval of said temporary permit. Failure to comply with this requirement shall *ipso facto* cancel and void this temporary permit.

SEC. 3. The said stations shall be so located, constructed, and operated, that no interference shall be caused to other radio services.

SEC. 4. The said stations shall be operated by duly licensed operators only and shall be used exclusively by the grantee in transmitting and receiving official messages and communications in relation to its business.

SEC. 5. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 1891

[REPUBLIC ACT No. 654]

AN ACT CREATING THE MUNICIPALITY OF MALANGAS IN THE PROVINCE OF ZAMBOANGA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Malangas, La Dicha, Diplo, Gusem, Buug, Matinaw, Gaulan, Tinungtungan, Manangon, Lindang, Luop, Silupa, Minsulao, Paruk, Lubing, Balabao, Mali, Baluran, Sampuli and Bacao are separated from the Municipality of Margosatubig, Province of Zamboanga, and constituted into a new and regular municipality to be known as the Municipality of Malangas in the same province.

SEC. 2. The first mayor, vice mayor and councilors of the new municipality shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 1919

[REPUBLIC ACT No. 655]

AN ACT CREATING THE MUNICIPALITY OF MANUKAN IN THE PROVINCE OF ZAMBOANGA

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The barrios of Manukan, Lipras, Dipane, Linay, Mate, Sirongan, Libuton, Disakan, Siparok, Ponot, and Manawan are separated from the Municipality of Katipunan, Province of Zamboanga, and constituted into a new and regular municipality to be known as the Municipality of Manukan in the same province.

SEC. 2. The first mayor, vice-mayor and councilors of the new municipality shall be appointed by the President

of the Philippines and shall hold office until their successors shall have been elected and shall have duly qualified.

SEC. 3. This Act shall take effect upon its approval.

Approved, June 16, 1951.

S. No. 45

[REPUBLIC ACT NO. 656]

AN ACT TO CREATE AND ESTABLISH A "PROPERTY INSURANCE FUND" AND TO PROVIDE FOR ITS ADMINISTRATION AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. This Act shall be known as the "Property Insurance Law."

SEC. 2. In order to indemnify or compensate the Government as defined in this Act for any damage to, or loss of, its properties due to fire, earthquake, storm, or other casualty there is hereby established the "Property Insurance Fund", which shall consist of all moneys resulting from the liquidation of the insurance constituted in section three hundred forty of the Revised Administrative Code and from premiums and other incomes.

SEC. 3. For the effectuation of the purpose of this Act, the administration of the Fund is hereby placed under the Government Service Insurance System with powers and authority to reinsure with private insurance companies under such terms and conditions that may be mutually agreed upon any excess risk it may deem advisable; to prescribe necessary rules and regulations, including such incidental powers as are necessary for its operation; and to appoint personnel, who are certified as eligibles by the Civil Service, prescribe their duties, and fix their remuneration. Section fifteen of Commonwealth Act Numbered One hundred eighty-six shall not be applicable to the personnel of the Fund.

SEC. 4. *Definitions.*—For the purposes of this Act—

(a) "System" means the Government Service Insurance System created under Commonwealth Act Numbered One hundred and eighty-six.

(b) "Fund" means the "Property Insurance Fund" created under this Act.

(c) "Property" includes vessels and craft, motor vehicles, machineries, permanent buildings, properties stored therein, or in buildings rented by the Government, or properties in transit.

(d) The word "Government" as used in this Act refers to the National, provincial, city, or municipal government, agency, commission, board or enterprises owned or controlled by the Government.

(e) "Disposable Surplus" means the amount left after the necessary insurance reserves and other reserves have been set aside together with the expenses incidental to the administration of the Fund.

SEC. 5. Every government, except a municipal government below first class, is hereby required to insure its properties, with the Fund against any insurable risk herein provided and pay the premiums thereon, which,

however, shall not exceed the premiums charged by private insurance companies: *Provided, however,* That the System reserves the right to disapprove the whole or a portion of the amount of insurance applied for: *Provided, further,* That such property or part thereof as may not be insurable or acceptable for insurance may be insured with any private insurance company. A municipal government below first class may upon application insure its properties in the Fund under such rules and regulations as the System may prescribe.

SEC. 6. *Collection and payment of premiums.*—(a) In accordance with such rules and regulations as the System may prescribe under section three of this Act, the premiums on insurance under section five hereof shall be paid in advance to the System by the government concerned.

(b) *Penalties.*—Any cashier, treasurer, or any government official responsible for the collection and/or remittance of the premiums hereinabove prescribed, who refuses or habitually neglects to comply with the instructions of the System and to collect or accept payments of the said premiums, issue receipts therefor, and/or remit the same within the time prescribed by the System, shall be held liable for the payment of said premiums and shall pay to the System a fine of two *per centum* per month of said premiums from their due dates until received by the System.

SEC. 7. (a) There shall be collected, classified, analyzed, and kept under the custody of the System such statistical data as may be necessary for the proper determination of risks and rates of premiums for the insurance of properties herein defined.

(b) The records and accounts of the Fund shall be kept separate and distinct from those of other funds of the System.

(c) During the month of October of each year, the System shall submit to the President a report of the operations of the Fund during the preceding year.

SEC. 8. The Auditor General and the Government Corporate Counsel shall be the ex-officio auditor and legal adviser of the Fund, respectively. The Auditor General, or his authorized representative, shall submit to the System soon after the close of each fiscal year audited statements showing its financial condition and progress for the fiscal year just closed and the actuary shall likewise make an actuarial examination and valuation of the fund.

SEC. 9. Any disposable surplus that may result from the operation of this Fund once declared by the System shall be apportioned in accordance with the schedule approved by the System among the governments whose properties are insured in the Fund.

The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the Fund when and as they shall become due.

SEC. 10. Upon approval of this Act, the System shall require the inventory of the property belonging to each government, determine the value thereof for purposes of insurance, and advise the government concerned of the total premiums each shall pay to the Fund. The government concerned shall, upon receipt of advice from the System, set aside from any savings in its appropriation

the amount needed for such premiums and certify to the availability thereof, and the Auditor General or his duly authorized representative shall forthwith release the same to the credit of the System by means of a journal voucher drawn for the purpose. Thereafter, the official concerned shall remit it to the System immediately: *Provided*, That the premiums corresponding to the insurance of properties belonging to an entity operated with a special fund shall be payable from said fund; otherwise, from the general fund.

SEC. 11. Each government as defined herein shall include in its annual appropriation the amount necessary to cover the premiums for the insurance of its properties during each fiscal period and remit the same immediately to the System as provided in section ten hereof.

SEC. 12. Chapter sixteen of the Revised Administrative Code, as amended, is hereby repealed, and all the present assets and liabilities of the Property Insurance Fund created thereunder shall be liquidated upon approval of this Act and turned over to the System. The Auditor General and the Commissioner of the Budget or their authorized representative shall carry out the provisions of this section: *Provided*, That the properties insured under the Property Insurance Fund shall continue to be governed by existing law until they shall have been insured anew with the Fund under the provisions of this Act.

SEC. 13. This Act shall take effect on the first day of the third calendar month following that of its approval.

Approved, June 16, 1951.

S. No. 256

[REPUBLIC ACT No. 657]

AN ACT TO PROMOTE THE PRODUCTION OF CASSAVA FLOUR, TO REGULATE THE IMPORTATION OF WHEAT FLOUR AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. It is hereby declared to be in the interest of the country's economy and the development of its agriculture and industry, to encourage and promote the production, processing and consumption of cassava flour as a measure to conserve dollars, to prevent the scarcity of wheat flour, and to regulate its importation, consistent with the commitments of the Republic of the Philippines under the International Wheat Agreement.

SEC. 2. For the purpose of carrying out the policy set forth in section one of this Act, the Price Stabilization Corporation is hereby authorized and directed to prescribe as a condition for the issuance of any license to import wheat flour from abroad that the importer shall buy cassava flour in such proportions, not to exceed thirty (30%) *per centum* of wheat flour by weight, as may be prescribed by the Administrator of Economic Coordination, and shall sell cassava flour and wheat flour in the same proportions.

SEC. 3. Any importer of wheat flour who refuses or purposely avoids or deliberately fails to comply with the conditions provided in the preceding section shall not be granted any license to import wheat flour. The license to import wheat flour of any importer found by the Price Stabilization Corporation to have sold wheat flour without the corresponding proportion of cassava flour shall be forthwith cancelled and the said importer shall for a period of not more than five (5) years be disqualified to engage in the importation of wheat flour. An appeal may be made by the importer to the Administrator of Economic Coordination whose decision shall be final.

SEC. 4. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 1324

[REPUBLIC ACT NO. 658]

AN ACT TO AMEND SECTION THREE HUNDRED AND THIRTY-FOUR OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SIXTY-SIX, KNOWN AS THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED BY REPUBLIC ACT NUMBERED FOUR HUNDRED AND THIRTY-EIGHT.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section three hundred and thirty-four of Commonwealth Act Numbered Four hundred and sixty-six, otherwise known as the National Internal Revenue Code, as amended by Republic Act Numbered Four hundred and thirty-eight, is hereby further amended to read as follows:

"SEC. 334. *Corporations, companies, partnerships, or persons required to keep books of accounts.*—All corporations, companies, partnerships, or persons required by law to pay internal revenue taxes shall keep a journal and a ledger, or their equivalents: *Provided however*, That those whose gross quarterly sales, earnings, receipts, or output do not exceed five thousand pesos shall keep and use a simplified set of Bookkeeping Records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown and from which all taxes due the Government may readily and accurately be ascertained and determined anytime of the year: *And provided, further*, That in the case of corporations, companies, partnerships or persons whose gross quarterly sales, earnings, receipts or output exceed twenty five thousand pesos, shall have their Books of Accounts audited and examined yearly by Independent Certified Public Accountants and their income tax returns accompanied with certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding incomes therefrom and other relevant statements."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 16, 1951.

S. No. 153

[REPUBLIC ACT No. 659]

AN ACT AMENDING SECTION FOUR OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND SEVENTY-ONE, DECLARING WITH FULL FORCE AND EFFECT ALL FISHING ORDINANCES, RULES OR REGULATIONS PROMULGATED BY PROVINCIAL BOARDS, MUNICIPAL BOARDS OR COUNCILS, OR MUNICIPAL DISTRICT COUNCILS UNLESS DISAPPROVED IN WRITING BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES WITHIN THIRTY DAYS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section four of Commonwealth Act Numbered Four hundred and seventy-one is hereby amended to read as follows:

"SEC. 4. *Instructions, orders, rules, and regulations.*—The Secretary of Agriculture and Natural Resources shall from time to time issue instructions, orders, rules, and regulations consistent with this Act, as may be necessary and proper to carry into effect the provisions thereof and for the conduct of proceedings arising under such provisions; and all licenses, permits, leases, and contracts issued, granted, or made herein shall be subject to the same.

"All ordinances, rules or regulations pertaining to fishing or fisheries promulgated or enacted by provincial boards, municipal boards or councils, or municipal district councils shall be submitted to the Secretary of Agriculture and Natural Resources for approval and shall have full force and effect unless notice in writing of their disapproval is communicated by the secretary to the board or council concerned within thirty days after submission of the ordinance, rule, or regulation."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 16, 1951.

H. No. 1631

[REPUBLIC ACT No. 660]

AN ACT TO AMEND COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX ENTITLED "AN ACT TO CREATE AND ESTABLISH A GOVERNMENT SERVICE INSURANCE SYSTEM, TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR," AND TO PROVIDE RETIREMENT INSURANCE AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subsections (a), (d), and (f) of section two of Commonwealth Act Numbered One hundred and eighty-six are hereby amended to read as follows and subsection (g) is hereby added:

"SEC. 2. *Definitions*.—When used in this Act the following terms shall, unless the context otherwise indicates, have the following respective meanings:

"(a) 'Employer' shall mean the National or a local government, an agency, board, or corporation controlled or owned by the Government. 'Employee' shall mean any Filipino citizen in the service of said 'employer'.

"(d) 'Member' shall mean any person insured in the System.

"(f) 'Membership policy' shall mean a life insurance policy for an amount, the monthly premium of which is equivalent to two, five or six *per centum* of an employee's monthly salary or compensation.

"(g) 'Regular officer' or 'enlisted man' shall mean one whose commission or enlistment is in the regular force of the Armed Forces of the Philippines and not in the reserve force thereof."

SEC. 2. Section four of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

"SEC. 4. *Scope of application of System*.—(a) Membership in the System shall be compulsory upon all regularly and permanently appointed employees, including those whose tenure of office is fixed or limited by law; upon all teachers except only those who are substitutes; and upon all regular officers and enlisted men of the Armed Forces of the Philippines: *Provided*, That it shall be compulsory upon regularly and permanently appointed employees of a municipal government below first class only if and when said government has joined the System under such terms and conditions as the latter may prescribe.

"(b) Membership in the System shall be optional with an elective official of the National Government or of a local government that is a member of the System: *Provided*, That if he desires to come within the purview of this Act, he must notify the System in writing to that effect: *Provided, further*, That he complies with the requirements of the System and that he is in the Government service when his insurance takes effect: *And provided, finally*, That after his admission into the System he shall be entitled to life insurance benefit for which he shall pay either one *per centum* or three *per centum* of his monthly salary, depending on the kind of insurance selected by him, and his employer shall likewise pay for him the same amount."

SEC. 3. Section five of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

"SEC. 5. (a) *Rates of contributions*.—For the benefits described hereunder, each employee who is a member of the

System and his employer shall pay the monthly rates of premiums specified in the following schedule:

MONTHLY PREMIUMS			
Benefits	Percentage of monthly salary payable by—		Remarks
	Employee	Employer	
I. Life insurance	1	1	Payment of premium shall begin on the last day of the calendar month preceding the month when one's insurance takes effect. Except as otherwise provided in this Act, the first rate shall apply to a civilian employee insured on or after the approval of this Act. The second rate shall apply to a civilian employee already insured prior to the approval of this Act unless he chooses term insurance in which case the first rate shall apply. The third rate shall apply to a regular officer or an enlisted man.
	3	3	
	5	0	
II. Retirement insurance	4	6	If employee's monthly salary is ₱200 or less.
	5	5	If employee's monthly salary is more than ₱200, but his premium for this benefit shall not exceed ₱37.50 per month.

"Payment of premiums for retirement insurance shall begin on the last day of the third calendar month following the month this Act was approved or the employee entered the service, whichever is the later date: *Provided, however*, That such premiums shall not be required of Justices of the Supreme Court, elective officials, and regular officers and enlisted men, who are hereby excluded from said benefit.

"(b) *Premiums for optional insurance.*—The amount of premium on one's optional insurance described in section ten hereof shall be as provided in his policy. The premiums on this optional insurance shall be entirely borne by the insured.

"(c) *Premiums for optional retirement annuity.*—Each employee may at his option and under such rules and conditions as the System may prescribe deposit additional amounts from time to time, the total of which shall not exceed ten *per cent* of the total salaries he has received from his employer prior to his retirement. These deposits shall be credited with interest of three *per centum per annum*, compounded monthly, and together with said interest shall at the date of his retirement be available to purchase in addition to the annuity described in section eleven hereof such an annuity as he will elect and the System will offer. In the event of his death or separation before becoming eligible for retirement, the total amount so deposited, with interest, shall be refunded to him or his beneficiaries as recorded in his application for optional retirement annuity filed with the System.

"(d) *Collection and remittance of premiums.*—Each employer concerned shall at the end of each month deduct and withhold from the monthly salary of every employee in its

service the premiums payable by him in accordance with the preceding schedule plus the additional premiums, if any, required in section seven hereof. It shall advance and remit to the System beginning April 1 of each year and quarterly thereafter the monthly premiums for the current quarter, together with its corresponding shares as described in the said schedule, plus extra premiums and additional amounts, if any, as required in the following sections: *Provided*, That if such employee is separated from the service, then any premiums not due and payable shall be refunded or credited to his employer. A member no longer in the service may pay his premiums directly to the System or as provided herein below.

"Except as otherwise specified herein, payment of any premium on one's optional insurance and/or retirement annuity in the System may be made to an employer whose location is convenient to the member, and such employer is hereby authorized and required to accept such payment, issue receipt therefor, and remit the same immediately to the System."

SEC. 4. Section six of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

"SEC. 6. *Employer's premiums.*—Each employer shall include in its annual appropriation and remit to the System the necessary amounts for its corresponding shares of the premiums described in subsection (a) of section five, plus any extra premiums that may be required on account of the hazards or risks of its employees' occupations, plus the additional amounts, if any, required in the next following section: *Provided, however*, That if one's compulsory membership policy matures, the employer's premium for his life insurance shall cease until he acquires a new membership policy, which, however, shall be granted only upon satisfactory evidence of insurability: *And provided, finally*, That in case of transfer of an employee from one employer to another, the former employer shall be relieved of paying further premiums for him and the new employer whether or not it has joined the System, shall assume the same, appropriating therefor the necessary amount.

"The Board shall have the full power and authority to adopt rules and regulations for the collection and remittance of premiums or other amounts payable as provided in this Act and/or any indebtedness to the System, and impose a fine not exceeding the loss or damage that the System may suffer on the official or officials responsible for the delay or failure in collecting or remitting said premiums or indebtedness without prejudice to such other punishment as may be imposed in accordance with existing Civil Service rules and regulations. Notwithstanding any law to the contrary, the Board may give extra remuneration to officials in charge of collecting and remitting said premiums, amounts, or indebtedness, if by so doing the best interest of the System shall be advanced."

SEC. 5. Section seven of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

"SEC. 7. *Additional premiums.*—(a) For the amount of annuity corresponding to the services rendered by an em-

ployee prior to the approval of this Act, his employer shall pay under such rules and regulations as the System may prescribe the necessary additional amounts or premiums.

“(b) The Board is hereby authorized and empowered, in carrying out the provisions of this Act, to supplement the individual premiums of members with moneys received in the form of donations, gifts, legacies, or bequests, or otherwise, and to receive and deposit to the credit of the System, and invest all moneys which may be donated by private individuals, organizations, or corporations.

“(c) All savings in appropriations for salaries and wages that may be realized by each employer during each fiscal year shall be transferred by said employer to the System which shall use the same for the payment of benefits provided in this Act.”

SEC. 6. Section eight of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

“I—*Life Insurance Benefit*

“SEC. 8. (a) *Compulsory membership insurance.*—An employee whose membership in the System is compulsory shall be automatically insured on the first day of the seventh calendar month following the month he was appointed or on the first day of the sixth calendar month if the date of his appointment is the first day of the month: *Provided*, That his medical examination, if required, has been approved by the System.

“(b) *Optional membership insurance.*—The life insurance of an employee whose membership in the System is optional shall take effect, if he is alive, on the first day of the calendar month following the calendar month during which the first premium thereon was paid to the System: *Provided*, That his application for membership and his medical examination, if required, have been approved by the System.

“(c) *Amount and kind of insurance.*—Compulsory membership insurance shall be term insurance of an amount equal to the employee's current annual salary: *Provided*, however, That this subsection shall not apply to any civilian employee who prior to the approval of this Act is already insured in the System nor to a regular officer or an enlisted man: *And provided, further*, That upon his request a civilian employee may have his old membership insurance changed into a paid-up endowment insurance and be reinsured under a term insurance on submission of satisfactory evidence of insurability unless such request be made within one year from the date of approval of this Act. Optional membership insurance shall be, as he may select, either the term insurance described above or an endowment insurance whose amount shall be whatever the six *per centum* monthly premium will buy.”

SEC. 7. Section ten of Commonwealth Act Numbered One hundred and eighty-six is hereby amended to read as follows:

“SEC. 10. *Optional insurance.*—Upon application to the Board and on satisfactory evidence of insurability, each member may obtain, at any time, additional life insurance as he may desire, subject to the provisions of section

fourteen hereof: *Provided*, That the amount of said additional life insurance shall be in multiple of one hundred pesos and that its aggregate amount shall not exceed an amount, to the nearest hundred pesos, equal to his current annual salary: *And provided, further*, That the full amount of the premiums on such additional insurance shall be paid by said member, and the amount thereof may be deducted from his pay or compensation, when expressly authorized by him."

SEC. 8. The following new sections are hereby inserted in Commonwealth Act Numbered One hundred and eighty-six:

"II.—*Retirement Insurance Benefit*

"SEC. 11. (a) *Amount of annuity*.—Upon retirement a member shall be automatically entitled to a life annuity payable monthly for at least five years and thereafter as long as he lives. The amount of the monthly annuity at the age of fifty-seven years shall be twenty pesos, plus, for each year of service rendered after the approval of this Act, one and six-tenths *per centum* of the average monthly salary received by him during the last five years of service, plus, for each year of service rendered prior to the approval of this Act, if said service was at least seven years, one and two-tenths *per centum* of said average monthly salary: *Provided*, That this amount shall be adjusted actuarially if retirement be at an age other than fifty-seven years: *Provided, further*, That the maximum amount of monthly annuity at age fifty-seven shall not in any case exceed two-thirds of said average monthly salary or five hundred pesos, whichever is the smaller amount: *And provided, finally*, That retirement benefit shall be paid not earlier than one year after the approval of this Act. In lieu of this annuity, he may prior to his retirement elect one of the following equivalent benefits:

"(1) Monthly annuity during his lifetime;

"(2) Monthly annuity during the joint-lives of the employee and his wife or other designated beneficiary, which annuity, however, shall be reduced upon the death of either to one-half and be paid to the survivor;

(3) For those who are at least sixty-five years of age, lump sum payment of present value of annuity for first five years and future annuity to be paid monthly; or

"(4) Such other benefit as may be approved by the System.

"(b) *Survivors benefit*.—Upon death before he becomes eligible for retirement, his beneficiaries as recorded in the application for retirement annuity filed with the System shall be paid his own premiums with interest of three *per centum per annum*, compounded monthly. If on his death he is eligible for retirement, then the automatic retirement annuity or the annuity chosen by him previously shall be paid accordingly.

"(c) *Disability benefit*.—If he becomes permanently and totally disabled and his services are no longer desirable, he shall be discharged and paid his own contributions with interest of three *per centum per annum*, compounded monthly, if he has served less than five years; if he has served at least five years but less than fifteen years, he shall be paid also the corresponding employer's premiums,

without interest, described in subsection (a) of section five hereof; and if he has served at least fifteen years he shall be retired and be entitled to the benefit provided under subsection (a) of this section.

“(d) Upon dismissal for cause or on voluntary separation, he shall be entitled only to his own premiums and voluntary deposits, if any, plus interest of three *per centum per annum*, compounded monthly.

“SEC. 12. *Conditions for retirement.*—(a) On completion of thirty years of total service and attainment of age fifty-seven years, a member shall have the option to retire. In all cases, the last three years of service before retirement must be continuous, and he has made contributions for at least five years, which contributions may, upon his request approved by the Board, be deducted from his life annuity under such terms and conditions as the Board may prescribe. In the case of those who are at least fifty-seven years of age a period of service shorter than thirty years may be allowed, provided that each year decrease in service shall be compensated by one-half year increase in age over fifty-seven years. A younger age of retirement may be permitted provided that each year decrease below fifty-seven years shall be compensated by one year increase in service over thirty years. If an employee is a laborer or one whose work is mostly manual, the ages mentioned above may be decreased by not more than five years at the discretion of the System. In all cases no one shall be entitled to retirement benefit if his age is below fifty-two years or his total service is less than fifteen years.

“(b) The employer concerned may request the retirement of any such employee described in the preceding subsection who, by reason of a disqualification, is unable to perform satisfactorily and efficiently the duties of his position or some other position of the same grade or class as that occupied by the employee and to which he could be assigned, but such request shall be submitted to the Civil Service Board of Appeals only after the said employee had been notified in writing of the proposed retirement. No such employee, however, shall be so retired unless the Civil Service Board of Appeals has given him a hearing and found him after examination that he is so disqualified. The decision of the Civil Service Board of Appeals as to whether or not the said employee shall be retired under this sub-section shall be final and conclusive.

“(c) Retirement shall be automatic and compulsory at the age of sixty-five years, if he has completed fifteen years of service, and if he has not, he shall be allowed to continue in the service until he shall have completed fifteen years unless he is otherwise eligible for disability retirement. This clause shall not apply to members of the judiciary and constitutional officers whose tenure of office is guaranteed. Upon specific approval of the President of the Philippines, an employee may be allowed to continue to serve after the age of sixty-five years if he possesses special qualifications and his services are needed. It shall be the duty of the employer concerned to notify each such employee under its direction of the date of his automatic separation from the service at least sixty days in advance thereof.

“(d) An employee separated from the service who is receiving an annuity described under section eleven shall

not be eligible again to appointment to any appointive position or employment under any 'employer' unless the appointing authority determines that he is possessed of special qualifications and his medical examination has been approved by the System, in which event payment of his annuity shall be suspended during the period of his new employment: *Provided, however*, That nothing in this Act shall be so construed as to affect the rights of the annuitant's beneficiary if the annuitant has been receiving or had elected, and was otherwise entitled to, a reduced annuity under subsection (a) of section eleven: *And provided, further*, That upon the termination of his new appointment, the payment of the annuity which was suspended shall be resumed.

"(e) If an employee who is not receiving the annuity mentioned in the next preceding subsection be reinstated in the service, he shall be given full credit for services rendered by him prior to the approval of this Act for the purpose of determining the amount of annuity under section eleven hereof to which he may be entitled: *Provided, however*, That said credit shall not be given if the employee shall not refund to the System any amount he received therefrom with interest of three *per centum per annum* compounded monthly from the date he received them up to the date of their payment, or any gratuity or benefit he received under any pension or retirement plan of an employer unless expressly exempted by law from refunding said gratuity or pension: *Provided, further*, That if separated before, and reinstated after, the approval of this Act, only three-fourths of said prior services shall be credited to the employee after complying with the condition stated above.

"SEC. 13. *Computation of service.*—The aggregate period of service which forms the basis for retirement and calculating the amount of annuity described in section eleven hereof shall be computed from the date of original employment, whether as a classified or unclassified employee in the service of an 'employer', including periods of service at different times and under one or more employers, and also periods of service performed overseas under the authority of the Republic of the Philippines and periods of honorable service in the Armed Forces of the Philippines prior to the approval of this Act, and periods of honorable service in the Philippines under the authority of the United States Government if rendered prior to July fourth nineteen hundred and forty-six: *Provided, however*, That in the case of an employee who is eligible for and receives retirement pay on account of military or naval service or on account of disability incurred therein, the period of service upon which such retirement pay is based shall be excluded: *Provided, also*, That periods of service rendered after the approval of this Act during which premiums are not required shall be excluded, unless the premiums corresponding to said service be later on paid to the System with interest: *And provided, further*, That the period February twenty-eight nineteen hundred and forty-five and from January first nineteen hundred and forty-two to any period not exceeding one year at a time during which an officer or employee had been thereafter out of the service to the date of his reinstatement or reappointment before the approval of this Act shall be included for those

who were in the service on December eight, nineteen hundred and forty-one, except those who were separated prior to Japanese occupation, in the computation of total service, the annuity mentioned herein, and payment of premiums therefor."

SEC. 9. Section eleven of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section fourteen and is amended to read as follows:

"SEC. 14. *Special rights attached to life insurance policy.*—Any life insurance policy issued under the provisions of this Act shall not be assignable, except to the System, and shall be entitled to participation in the surplus, as provided in section twenty-five hereof. It shall continue in force, except as otherwise provided herein, whether the member is in or out of the service, so long as he complies with the provisions and conditions thereof. Such policy and the proceeds thereof shall be exempt from all taxes, and shall not be considered a gratuity."

SEC. 10. Section twelve of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section fifteen.

SEC. 11. Section thirteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section sixteen and is amended to read as follows:

"SEC. 16. *Administration of the System.*—The System shall be a non-stock corporation, with its principal place of business in Manila, Philippines. It shall be managed by a Board of Trustees to consist of five members to be appointed by the President of the Philippines with the consent of the Commission on Appointments. The trustees shall elect from among themselves a chairman and a vice-chairman. Each trustee shall hold office for three years or until his successor is duly qualified, except that of the Board first appointed, one shall hold office for one year, two for two years, and two for three years. At the expiration of their respective terms, a successor shall be appointed for the term of three years, from the date of such expiration. All vacancies, except through the expiration of the terms, shall be filled for the unexpired term only. The trustees shall be entitled to a *per diem* of twenty-five pesos for each day of actual attendance in session."

SEC. 12. Section fourteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section seventeen and is amended to read as follows:

"SEC. 17. *General powers of the Board.*—The Board shall have the powers specified in this Act and the usual general corporate powers. Among others, it shall have the following exclusive powers and authority: (a) to adopt by-laws, rules and regulations for the administration of the System and the transaction of its business; (b) to adopt from time to time a budget of expenditures, including salaries of personnel, and appropriate therefor the necessary amounts; (c) to set up its accounting unit and provide the necessary personnel therefor; (d) to invest its funds directly or indirectly; to discount pensions guaranteed under this Act at such rate of discount it may prescribe; (e) to establish branches of the System whenever and wherever it may be expedient or necessary, fix their domiciles and

in general prescribe the other complementary rules of organization which this Act imposes; (f) to lease, purchase, construct or otherwise acquire real property and/or buildings and such facilities which may be necessary or expedient to the effective execution of the purposes of this Act; (g) to prescribe the forms of life insurance and annuity contracts to be issued and the benefits thereof including accident benefits; (h) to fix the premium rates, conditions and terms thereof, taking into consideration the kind of insurance, age, health, and other factors affecting the insurability of the employee or member, and to authorize the issuance thereof when so determined; (i) to construct, establish and/or operate hospitals and sanatoriums when possible and expedient or necessary to the employees' welfare; (j) to enter into agreements or contracts with Government and private hospitals or health institutions and with medical associations or duly licensed physicians, nurses, or other competent persons who may be needed in connection with medical and obstetrical services for members of the System and their dependents, paying them, and authorizing them to accept, reasonable necessary compensation therefor, notwithstanding any provision of law to the contrary; (k) except as otherwise provided in this Act, to extend, when possible and expedient, directly or through other agencies, and under such rules, regulations, and conditions it may prescribe, medical and obstetrical services to other members of the System and their dependents, and, in general, promote the health of the members of the System and appropriate necessary sums therefor from the surplus of the System; (l) having regard to any periodic audit and valuation of the retirement insurance fund, to make such immediate readjustments or modifications in any of the rates or periods of benefits granted under this Act and prescribe rules and conditions therefor, notwithstanding any provision of this Act to the contrary, as appear necessary in order to make said fund sufficient or no more than reasonably sufficient to discharge its liabilities: *Provided*, That no person may allege vested rights for reason of these readjustments or modifications; (m) to have the power of succession; (n) to sue and be sued; and (o) to exercise such other powers as may be necessary to carry on the business for which the System has been created."

SEC. 13. Section fifteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section eighteen and is amended to read as follows:

"SEC. 18. *Personnel*.—The Board shall have the power to appoint a general manager, or a general manager and actuary, who shall be a person of recognized experience and capacity in the subject of life and social insurance, and who shall be the chief executive officer of the System, one or more assistant general managers, one or more managers, a medical director, and an actuary, and fix their compensation. The general manager shall, subject to the approval of the Board, appoint additional personnel whenever and wherever they may be necessary to the effective execution of the provisions of this Act and fix their compensation. He shall have the power to prescribe their duties, grant leave, prescribe certain qualifications to the end that only

competent persons may be employed, and appoint committees: *Provided, however,* That said additional personnel shall be selected from civil service eligibles certified by the Commissioner of Civil Service and shall be subject to civil service rules and regulations except as herein otherwise provided.

"The Auditor General shall appoint a representative who shall be the auditor of the corporation, and the necessary personnel to assist said representative in the performance of his duties. The number and salaries of the auditor and said personnel shall be determined by the Auditor General, subject to appropriation by the Board of Directors; in case of disagreement, the matter should be submitted to the President of the Philippines whose decision shall be final. Said salaries and all other expenses of maintaining the auditor's office shall be paid by the System."

SEC. 14. Section sixteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section nineteen and is amended to read as follows:

"SEC. 19. *Records and reports.*—The Board shall cause to be kept such records as may be required for the purpose of making actuarial valuations of the System including such data necessary in the computation of rates of disability, mortality, and withdrawal among the members and any other information that may be useful for the adjustment of the benefits for the members of the System. Separate and distinct records of operation of each fund of the System and of disbursements for the same and all accounts of payments made out of each fund shall, likewise, be made and kept by the System.

"Within four months after the end of each fiscal year, the Board shall submit to the President of the Philippines who shall furnish a copy thereof to the Congress of the Philippines, a report of operations of the preceding year under the provisions of this Act."

SEC. 15. Section seventeen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty.

SEC. 16. Section eighteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-one.

SEC. 17. Section nineteen of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-two.

SEC. 18. Section twenty of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-three.

SEC. 19. Section twenty-one of Commonwealth Act Numbered one hundred and eighty-six is hereby changed to section twenty-four and is amended to read as follows:

"SEC. 24. *Accounts to be maintained.*—The System shall keep separate and distinct from one another the following funds:

"(a) *Life insurance fund.*—This shall consist of all premiums for life insurance benefit and/or earnings and savings therefrom. It shall meet death claims as they may arise or such equities as any member may be entitled to,

under the conditions of his policy, and shall maintain the required reserves to the end of guaranteeing the fulfillment of the life insurance contracts issued by the System. Said reserves shall be computed yearly in accordance with approved valuation standards and with an interest rate of not higher than four *per centum per annum*.

“(b) *Retirement insurance fund*.—This shall consist of all contributions for retirement insurance benefit and of earnings and savings therefrom. It shall meet annuity payments and establish the required reserves to the end of guaranteeing the fulfillment of the contracts issued by the System. Said reserves shall be determined yearly on such annuity tables, with an interest rate of not higher than three *per centum per annum*, as shall be adopted by the Board.

“(c) *Contingency reserve fund*.—This shall consist of such portion of the surplus of each fund mentioned above as may be set aside each year by the Board pursuant to section twenty-five hereof: *Provided*, That it shall not exceed ten *per centum* of the required reserves of the System.

“(d) *General fund*.—This shall consist of such amounts as may be set aside by the Board from each fund, to meet the expenses incidental to the enforcement of the provisions of this Act.

“The Government of the Republic of the Philippines hereby guarantees the fulfillment of the obligations of the Government Service Insurance System to the members thereof when and as they shall become due.”

SEC. 20. Section twenty-two of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-five and is amended to read as follows:

“SEC. 25. *Disposable surplus*.—Any disposable surplus that may result from the operations of the life insurance fund shall be apportioned among the members whose policies are in force for at least one year, when and if the Board deems it expedient, in accordance with the schedule prepared by the Actuary and approved by the Board. The disposable surplus shall be that amount left after the mean reserves of the policies, contingency reserves, the expenses incidental to the operation of said fund, the expenses incurred in promoting the health of the members, and other liabilities of the fund have been determined and set aside or satisfied.”

SEC. 21. Section twenty-three of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-six and is amended to read as follows:

“SEC. 26. *Exemptions from legal process and liens*.—No policy of life insurance issued under this Act, or the proceeds thereof, when paid to any member thereunder, nor any other benefit granted under this Act, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of such member, or his beneficiary, or any other person who may have a right thereunder, either before or after payment; nor shall the proceeds thereof, when not made payable to a named beneficiary, constitute a part of the estate of the member for payment of his debt: *Provided*,

however, that this section shall not apply when obligations or indebtedness to the employer are concerned."

SEC. 22. Section twenty-four of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-seven and is amended to read as follows:

"SEC. 27. *Appropriations.*—There is hereby appropriated for the current fiscal year, and annually thereafter, out of any fund in the Philippine Treasury or other depository not otherwise appropriated, including special and corporate funds, such sums as may be necessary to pay the contributions or premiums payable by each employer under this Act."

SEC. 23. Section twenty-five of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section twenty-eight and is amended to read as follows:

"SEC. 28. *Miscellaneous provisions.*—(a) Act Numbered Two thousand five hundred and eighty-nine, as amended, and all other retirement or pension plans heretofore in force in any chartered city or corporation owned or controlled by the Government are hereby declared inoperative or abolished, and Act Numbered Four thousand one hundred and eighty-three shall cease to be applicable to employees of any local government that may be admitted to the System, and hereafter no insurance or retirement plan for employees shall be created by any employer without the prior approval of the System: *Provided*, That the rights of those already retired shall not be affected: *Provided, further*, That as of the date of approval of this Act the present value of the benefit as may be computed by the actuary of the System or the gratuity payable to any member who has established his right before the approval of this Act to retire under either Act Numbered Two thousand five hundred and eighty-nine or Act Numbered Four thousand one hundred and eighty-three or under any retirement or pension plan mentioned above shall be credited and paid by the employer concerned to the retirement insurance fund of the System in installments to be determined by the System and approved by the President and shall be included in the computation of the additional premiums or amounts required in section seven hereof for the service annuity described in subsection (a) of section eleven hereof: *And provided, finally*, That such a member shall be entitled to the retirement benefit described in this Act only if he so notifies the System within six months from the approval of this Act, otherwise it shall be deemed that he does not desire to be retired under this Act and accordingly the gratuity or benefit payable to him under either aforementioned Act shall be exclusively reserved for him by the System. If such member elects the retirement benefit of this Act, but his position is abolished or he dies or becomes disabled before becoming eligible to said benefit, his legal heirs may be paid the retirement benefit to which he has established his right prior to the approval of this Act and his contributions under this Act shall be refunded as provided in section 11(d) hereof.

"(b) Except as herein otherwise provided, the Government Service Insurance System including all its forms or documents required of its members, shall be exempt from all types of taxes, documentary stamps, duties and contri-

butions, fiscal or municipal, direct or indirect, established or to be established; and more specially, it shall not be subject to the provisions of Act Numbered Twenty-four hundred and twenty-seven, as amended, and Commonwealth Act Numbered Four hundred and sixty-six, as amended, and no law hereafter enacted shall apply to said System unless it is provided therein that the same is applicable to the System by expressly stating the name of said entity.

“(c) Any provision of law inconsistent with the provisions of this Act is hereby repealed.”

SEC. 24. Section twenty-nine to read as follows is hereby added to Commonwealth Act Numbered One hundred and eighty-six:

“SEC. 29. *Penalty.*—Any person found to have participated, directly or indirectly, in the commission of fraud, collusion, falsification, misrepresentation of facts, or any other kind of anomaly in the issuance of any certificate or document for any purpose connected with this Act, or in obtaining any benefit or payment under this Act, whether for him or some other person, shall be punished by a fine not exceeding one thousand pesos or imprisonment not exceeding one year, or by both such fine and imprisonment at the discretion of the court, besides disqualification from holding public office and from practicing any profession or calling licensed by the Government.”

SEC. 25. Section twenty-six of Commonwealth Act Numbered One hundred and eighty-six is hereby changed to section thirty.

SEC. 26. Notwithstanding the provisions of this Act to the contrary, any officer or employee who died in the service within three years before said Act went into effect and who had rendered at least thirty-five years of service and who was entitled to or who could have established his right to the retirement gratuity provided for in Act Numbered Twenty-five hundred and eighty-nine, as amended, or to any other retirement benefits from any pension fund created by law shall be considered retired under the provisions of this Act if his wife, or in her default, his other legal heirs shall so elect and notify the System to that effect. Upon making such election, the wife or legal heirs of the deceased officer or employee shall be paid the monthly annuity for five consecutive years or such other benefit as provided in said Act, in lieu of the retirement gratuity or retirement benefits to which the deceased was entitled at the time of his death; and any portion of such gratuity or retirement benefits already paid to his wife or other legal heirs shall be refunded to the System: *Provided*, That contributions corresponding to his last five years of service shall be deducted monthly from his life annuity.

Notwithstanding any provisions of this Act to the contrary, any officer or employee whose position was abolished or who was separated from the service as a consequence of the reorganization provided for in Republic Act Numbered Four hundred and twenty-two may be retired under the provisions of this Act if qualified: *Provided*, That any gratuity or retirement benefit already received by him shall be refunded to the System: *Provided, further*, That contri-

butions corresponding to his last five years of service shall be paid as provided in section twelve of this Act. This provision shall also apply to any member of the judiciary who, prior to the approval of this Act, was separated from the service after reaching seventy years of age and rendering at least thirty years of service and who is not entitled to retirement benefit under any law.

Notwithstanding any provisions of this Act to the contrary, any officer or employee, who has not established his right to retire under Act Numbered Twenty-five hundred and eighty-nine or under Act Numbered Forty-one hundred and eighty-three, both as amended, but who has rendered not less than twenty-five years of service and has attained the age of fifty-seven years may elect to retire under either of said Acts if he shall establish such right within one year from the date of the approval of this Act, or under this Act if otherwise qualified.

SEC. 27. This Act shall take effect upon its approval: *Provided*, That if the financial condition of an employer does not permit payment of its contributions for retirement insurance herein required, such payment may be deferred under such conditions as the System may prescribe.

Approved, June 16, 1951.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Finance

BUREAU OF INTERNAL REVENUE

REVENUE REGULATIONS NO. V-12

July 9, 1951

AMENDMENT TO REVENUE REGULATIONS NO. V 2

To all Internal-Revenue Officers and others concerned:

The interest of the revenue service so requiring, the station town of the provincial revenue agent of Inspection Unit No. 27 comprising the Provinces of Surigao and Agusan and the City of Butuan is hereby transferred from Surigao, Surigao to the City of Butuan.

These regulations, which amend Revenue Regulations Nos. V-2 and V-5 shall take effect upon promulgation in the *Official Gazette*.

PIO PEDROSA

Secretary of Finance

Recommended By:

S. DAVID

Collector of Internal Revenue

REVENUE REGULATIONS NO. V-14

July 1, 1951

SMALL TOBACCO FACTORIES REGULATIONS

CHAPTER I

SECTION 1. Scope.—The following regulations shall govern the licensing and supervision over the operation of small tobacco factories and the payment of specific taxes due on tobacco products produced therein. For purposes of these regulations, the term "small tobacco factory" shall include any factory where cigars and/or cigarettes are manufactured, whose total estimated specific tax payable in a year shall not exceed ₱5,000; *Provided, however*, that if the factory paid during any calendar year more than ₱5,000, it shall operate during the succeeding year under the provisions of Regulations No. 27 of the Department of Finance. No factory licensed to operate under Regulations No. 27 shall be allowed to operate under these regulations. Such factories shall, therefore, continue to be governed by the provisions of Regulations No. 27, irrespective of the amount of specific tax paid by them in a year.

In connection with the operation of small tobacco factories, matters not covered by these regulations

shall be governed by the provisions of Regulations No. 27.

Small tobacco factories may be licensed to operate under the provisions of these regulations only if established in the Provinces of Rizal, Bulacan, Nueva Ecija and Ilocos Sur and such other provinces as may be designated by the Collector of Internal Revenue.

CHAPTER II

CONDITIONS PRECEDENT TO ENGAGING IN THE MANUFACTURE OF TOBACCO PRODUCTS

SEC. 2. Prior approval of the Collector of Internal Revenue necessary.—No manufacturer of tobacco products will be permitted to engage in business until his plant and bond have been approved by the Collector of Internal Revenue. Accordingly, no payment of the privilege tax will be accepted until the approval of the Collector of Internal Revenue is first had.

SEC. 3. Application for permission; names of authorized managers to be furnished.—Any person who intends to engage in the business of a tobacco manufacturer shall make application in writing to the Collector of Internal Revenue for permission to engage in such business, briefly describing the location and attaching to his application a plan of the building or buildings and equipment proposed to be used for factory purposes, or its branches showing in detail each room and its intended use. The application will be referred to an internal revenue officer for thorough investigation, report and recommendation.

Manufacturers authorizing one or more persons to act as manager or managers of their business shall file with the deputy provincial treasurer of the municipality in which the factory is situated a power of attorney in duplicate in favor of the person or persons authorized to sign, in their names, requisition for internal revenue stamps, the entries in the official register and auxiliary register books, the entries in the transcript sheets, and other papers pertaining to internal revenue matters. The original of this instrument shall be forwarded to the Collector of Internal Revenue.

SEC. 4. The factory building.—The factory building or buildings shall be constructed in such a manner as to effectively prevent the removal of the manufactured products without the prepayment of the specific tax. The applicant, before constructing the building or renting one, should first consult the Collector of Internal Revenue or his authorized representative so as to ascertain whether the specifications of the building meet with the approval

of the Collector of Internal Revenue. Before a license is issued, the factory owner should first apply for the final inspection of his factory premises and the approval thereof by the Collector of Internal Revenue.

SEC. 5. *Branch factory.*—The building or buildings of the branch factory shall likewise be subject to the inspection and approval of the Collector of Internal Revenue. The specific tax on all cigars and cigarettes produced in the branch factory should first be paid before the said products are removed therefrom.

No branch factory shall be established outside the district where the main or principal factory is located, and that no branch factory or factories will be permitted to be established that are not owned or operated exclusively by the owner or owners of the main or principal factory. By branch factory shall be understood a factory which is noncontiguous and subordinate to another located in the same district and belonging to the same owner.

All raw materials removed from a principal to a branch factory must be removed in substantial containers under official invoice corresponding to the register book in which it is a debit, or in well wrapped bundles of convenient size accompanied by an official L-7 invoice showing the net weight of each bundle, the number of bundles, and the total net weight, provided that raw materials may be removed or transferred from the main factory to the branch factory in bales or in closed cases at the discretion of the Collector of Internal Revenue. Said raw materials shall be assorted, dried, cleaned, sterilized, or otherwise prepared in the main factory before its removal to the branch factory and that the amount to be supplied to the branch factory shall not be more than what will be required for three days work in said branch factory.

SEC. 6. No small tobacco factory shall be allowed to operate at nighttime except upon special permit in writing by the Collector of Internal Revenue. A written application for this purpose, stating the reasons and the period for which permission is requested, should be submitted and its approval secured.

SEC. 7. A sign in letters not less than 6 centimeters high shall be placed and kept in a conspicuous position on the outside of every building used as a tobacco factory or warehouse, showing the name of the factory (commercial name), its schedule, paragraph, and assessment numbers, and the class or classes of business, as for example:

Name of factory

A-5-98

Cigarette Factory

SEC. 8. The owner of the factory shall provide himself with such equipment as the Collector of Internal Revenue may require for the purposes of weighing the raw materials used in the manufacture

of cigars or cigarettes and for the cancellation of internal revenue stamps for affixture to the packages or containers of the manufactured products.

CHAPTER III

SANITARY REQUIREMENTS

SEC. 9. *General sanitary provisions.*—The owner of the factory shall comply with the sanitary requirements of the health authorities of the municipality where the factory is located. The said owner shall, among other things, keep the floors swept and scrubbed, rubbish removed, and walls and ceiling cleaned.

The factory premises should be kept healthful for the laborers as required by the health authorities. The laborers should be prohibited from spitting on the floor, or urinating or disposing of personal wastes inside the factory buildings, Washing facilities should be provided inside the factory, but toilet rooms should be maintained outside the factory buildings, unless allowed in writing by the Collector of Internal Revenue.

Every laborer, workman, operator, or other employee of the tobacco factory, who is engaged in the handling, cleaning, preparing, making or packing of cigars or cigarettes, shall, upon arrival at the factory and before beginning work and after each visit to a closet or urinal and before resuming work, wash his or her hands thoroughly with soap and water and dry them with a clean towel.

The Collector of Internal Revenue may, from time to time, impose the owner of the factory such additional sanitary requirements as are recommended by the health authorities or as he may deem proper.

There shall be provided in every room of a tobacco factory at least one cuspidor for each ten persons. No person shall expectorate or deposit any mucus or phlegm on the floors or walls in or about the factory. The cuspidors herein required shall be of an impervious material with smooth polished surfaces, so as to be easily cleaned, and shall be emptied, cleaned with water and partially filled with disinfecting fluid every day, or oftener when so required by the health authorities. The revenue officers shall cooperate with the health authorities in this regard.

An employee of the factory shall be detailed for this work by the owner of the factory or its manager, to see that the provisions of this section and the preceding one are carried out.

SEC. 10. *Insanitary acts.*—No person engaged in the handling, preparation, processing, making, or packing of tobacco products or supervising such employment, shall perform, cause, permit, or suffer to be permitted any insanitary act during such employment, nor shall any such person touch or contaminate any tobacco products with filthy hand or permit the same to be brought into contact with

the tongue or lips, or use saliva, impure water, or other unwholesome substances as a moistening agent; nor shall any such person trample, walk, or stand upon such tobacco or tobacco products or permit or suffer the same to be done. Care should also be taken, especially by women employed in the factory, that no loose hair should be allowed to fall and get mixed with the tobacco under process of manufacture. To this end, no women workers will be allowed to have their hair remain loose while within the factory premises.

Containers of paste used in the manufacture and packing of cigars and cigarettes shall be washed every morning, and the paste for each day shall be cooked every morning. The use of paste left over from previous day is prohibited.

SEC. 11 *Authority of health authorities.*—The owner of factory shall comply with such requirements as may be imposed by the health authorities for the protection of the health of the laborers inside the factory or of the consumers of the tobacco products manufactured therein or of the public in general. The revenue officers shall cooperate with the health authorities in enforcing sanitary requirements.

SEC. 12. These regulations shall take effect upon publication in the *Official Gazette*.

PIO PEDROSA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

REVENUE REGULATIONS No. V-16

August 10, 1951

CANCELLATION OF TAX CLEARANCE CERTIFICATES

To all Internal Revenue Officers and others concerned:

SECTION 1. *Scope.*—Pursuant to the authority granted in section 338, in relation to sections 4(j) and 344, Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, the following regulations requiring the cancellation of tax clearance certificates issued by the Bureau of Internal Revenue are hereby promulgated and shall be known as Revenue Regulations No. V-16.

SEC. 2. *Cancellation of tax clearance certificates.*—Any person, corporation, company or association engaged in the business of carrying passengers shall, upon the issuance of a passage ticket for carrying any passenger from any place or port in the Philippines to any foreign place or port, cancel the tax clearance certificate issued by the Bureau of Internal Revenue to such passenger by stamping on the face thereof the following phrase in bold letter: "Used, Passage ticket No. issued on" followed by the

name of the shipping or airline company and the signature of the officer or employee of said company who issued the passage ticket.

SEC. 3. *Penalty.*—Any violation of these regulations shall be penalized under section 352 of the National Internal Revenue Code.

SEC. 4. *Effectivity.*—These regulations shall take effect upon publication in the *Official Gazette*.

PIO PEDROSA
Secretary of Finance

Recommended by:

S. DAVID
Collector of Internal Revenue

Department of Justice

ADMINISTRATIVE ORDER No. 121

June 30, 1951

DESIGNATING SPECIAL ATTORNEYS OF THE DEPARTMENT TO ASSIST THE PROVINCIAL AND CITY FISCALS, AND ATTORNEYS OF THE PROVINCES AND CITIES.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, the following special attorneys of this Department are hereby designated to assist the provincial and city fiscals and attorneys of the provinces and cities comprised within the respective judicial districts, as hereinbelow indicated, in the investigation and prosecution of all kinds of criminal cases, effective July 1, 1951, and to continue until further orders, to wit:

Victor G. Santillan—1st, 2nd, 3rd and 4th Judicial Districts, with official station at Dagupan City.
Pedro C. Quinto—5th, 6th and 7th Judicial Districts, with official station at Manila.
Agapito R. Conchu—6th, 8th, 9th and 10th Judicial Districts, with official station at Manila.
Godofredo Escalona—11th, 12th, 13th and 14th Judicial Districts, with official station at Iloilo City.
Benjamin K. Gorospe—15th and 16th Judicial Districts, with official station at Davao City.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 122

July 7, 1951

SUSPENDING JUSTICE OF THE PEACE VIRGILIO LAYNO OF LIANGA FOR GRAVE COERCION UNTIL FURTHER NOTICE FROM THE DEPARTMENT.

This Department has just received a copy of the information filed by the Assistant Provincial Fiscal of Surigao, in criminal case No. 1048 of the Court of First Instance thereof, for grave coercion, against Mr. Virgilio Layno, Justice of the Peace of Lianga.

In view thereof and pursuant to section 97 of Republic Act 296, in relation to section 37 of Act 4007, Justice of the Peace Layno is hereby suspended from office effective upon receipt of notice hereof and until further advice from this Department.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 123

July 10, 1951

AUTHORIZING CADASTRAL JUDGE LORENZO GARLITOS TO HOLD COURT IN CAUAYAN, NEGROS OCCIDENTAL

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Lorenzo Garlitos, Cadastral Judge, is hereby authorized to hold court in the municipality of Cauayan, Province of Negros Occidental, as soon as practicable, for the purpose of trying cadastral cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 124

July 12, 1951

AUTHORIZING JUDGE-AT-LARGE JOSE C. ZULUETA TO HOLD COURT IN PASIG, RIZAL TO TRY CERTAIN CASES.

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose C. Zulueta, Judge-at-Large, is hereby authorized to hold court in Pasig, Rizal, beginning today, for the purpose of trying the following cases and to enter judgments therein:

Special Proceeding No. R-2414 "In the matter of the Intestate Estate of the deceased Marcelo de Borja—Dr. Crisinto de Borja, Administrator";

Special Proceeding No. R-3705 "Testate of the deceased Juan Dizon—Vicente Santiago, petitioner";

Special Proceeding No. R-3731 "Intestate Estate of the deceased Ismael Dizon—Marta Dizon, petitioner";

Special Proceeding No. R-3894 "Testate Estate of the deceased Marta Dizon—Sixto de los Angeles, petitioner"; and

Civil case No. R-4362 "Vicente Santiago, etc., plaintiffs vs. Servando de los Angeles, etc. defendants."

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 125

July 14, 1951

AUTHORIZING JUDGE EMILIO BENITEZ TO HOLD COURT IN SALCEDO, SAMAR TO TRY ALL KINDS OF CASES AND TO ENTER JUDGMENTS THEREIN.

In the interest of the administration of justice and pursuant to the provisions of section 56 of

Republic Act No. 296, the Honorable Emilio Benitez, Judge of the Thirteenth Judicial District, Samar, Second Branch, is hereby authorized to hold court in the municipality of Salcedo, said province, during the month of October, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 127

July 19, 1951

AUTHORIZING JUDGE-AT-LARGE FIDEL VILLANUEVA TO HOLD COURT IN LA UNION

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Fidel Villanueva, Judge-at-Large, is hereby authorized to hold court in the Province of La Union, as soon as practicable, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 128

July 19, 1951

SETTING ASIDE DEPARTMENT ADMINISTRATIVE NO. 122, DATED JULY 7, 1951, SUSPENDING JUSTICE OF THE PEACE VIRGILIO LAYNO.

In view of the fact that criminal case No. 1048 of the Court of First Instance of Surigao, for grave coercion, against Mr. Virgilio Layno, Justice of the Peace of Lianga, has already been dismissed, Administrative Order No. 122 of this Department, dated July 7, 1951, suspending Mr. Layno from office, is hereby set aside.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 129

July 21, 1951

AUTHORIZING CADASTRAL JUDGE JOSE BONTO TO HOLD COURT IN DAGUPAN, PANGASINAN

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose Bonto, Cadastral Judge, is hereby authorized to hold court in Dagupan, Pangasinan, beginning August 6, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 130

July 20, 1951

AUTHORIZING JUDGE-AT-LARGE JULIO VILLAMOR TO HOLD COURT IN NUEVA ECIIJA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Julio Villamor,

Judge-at-Large, is hereby authorized to hold court in the Province of Nueva Ecija, beginning August 1, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 131

July 21, 1951

DESIGNATING PROVINCIAL FISCAL EMMANUEL M. MUÑOZ OF LAGUNA TO ASSIST THE CITY FISCAL OF CEBU CITY IN THE INVESTIGATION AND PROSECUTION OF PRISCO FLOUR CASES.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Emmanuel M. Muñoz, Provincial Fiscal of Laguna, is hereby designated to assist the City Fiscal of Cebu City in the investigation and prosecution of the so-called PRISCO Flour Cases and such other cases as are connected therewith, effective immediately.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 132

July 21, 1951

DESIGNATING PROVINCIAL FISCAL MATEO L. ALCASID OF BATANGAS TO ASSIST THE CITY ATTORNEYS OF NAGA IN THE INVESTIGATION AND PROSECUTION OF SUPPLY RACKET.

In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, Mr. Mateo L. Alcasid, Provincial Fiscal of Batangas, is hereby designated to assist the City Attorney of Naga City in the investigation and prosecution of the so-called Supply Racket cases thereat, effective immediately.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 133

July 28, 1951

DESIGNATING MR. FERNANDO PACANA TO ACT AS REGISTER OF DEEDS OF CAGAYAN DE ORO CITY

In the interest of the public service, and pursuant to the provisions of Republic Act No. 164, amending section 192 of the Administrative Code, in relation to Republic Act No. 521, section 24, sub-section (j), the Register of Deeds of the Province of Misamis Oriental, Mr. Fernando Pacana, is hereby designated to act as Register of Deeds for the City of Cagayan de Oro during the absence on leave of the regular incumbent city attorney and ex-officio register of deeds for said city, or until further orders.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 135

July 31, 1951

AUTHORIZING JUDGE-AT-LARGE FELICISIMO OCAMPO TO HOLD COURT IN MANILA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Felicisimo Ocampo, Judge-at-Large, is hereby authorized to hold court in Manila, beginning August 6, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 136

July 31, 1951

AUTHORIZING CADASTRAL JUDGE JOSE BEATO TO HOLD COURT IN CABANATUAN, NUEVA ECIIJA

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Jose Beato, Cadastral Judge, is hereby authorized to hold court in Cabanatuan, Nueva Ecija, beginning August 6, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

This Order cancels Administrative Order No. 129 of this Department, dated July 21, 1951.

JOSE P. BENGZON
Secretary of Justice

ADMINISTRATIVE ORDER No. 137

July 31, 1951

AUTHORIZING JUDGE-AT-LARGE JULIO VILLAMOR TO HOLD COURT IN DAGUPAN, PANGASINAN

In the interest of the administration of justice and pursuant to the provisions of section 56 of Republic Act No. 296, the Honorable Julio Villamor, Judge-at-Large, is hereby authorized to hold court in Dagupan, Pangasinan, beginning August 6, 1951, for the purpose of trying all kinds of cases and to enter judgments therein.

JOSE P. BENGZON
Secretary of Justice

Department of Agriculture and Natural Resources

BUREAU OF FORESTRY

FORESTRY ADMINISTRATIVE ORDER No. 8-1

February 7, 1951

AMENDMENT TO PARAGRAPH 1 OF FORESTRY ADMINISTRATIVE ORDER NO. 8, DATED DECEMBER 31, 1946

1. Paragraph 1 of Forestry Administrative Order No. 8, dated December 31, 1946, is hereby amended in so far as the division of the Philippines into forest

districts and classification of same are concerned, as follows:

District No.	Provinces and cities	Class	Headquarters	District No.	Provinces and cities	Class	Headquarters
1	Ilocos Norte	C	Laoag	33	Samar and City of Calbayog	B	Catbalogan
2	Ilocos Sur	C	Vigan	34	Palawan	B	Pto. Princesa
3	Abra	C	Bangued	35	Occidental Misamis and City of Ozamis	C	City of Ozamis
4	Cagayan and Batanes	A	Aparri	36	Lanao and Cities of Iligan and Dansalan	B	City of Iligan
5	Isabela	B	Iligan	37	Oriental Misamis and Cagayan de Oro City	A	Cagayan de Oro City
6	Mt. Province and City of Baguio	A	Bayombong	38	Bukidnon	C	Malaybalay
7	Nueva Vizcaya	B	City of Dagupan	39	Agusan and City of Butuan	A	City of Butuan
8	Pangasinan and City of Dagupan	B	City of Cabaatuan	40	Surigao	B	Surigao
9	Nueva Ecija and City of Cabanatuan	B	Tarlac	41	Zamboanga and Cities of Zamboanga and Basilan	A	City of Zamboanga
10	Tarlac	C	Iba	42	Cotabato	A	Cotabato
11	Zambales	B	Balanga	43	Davao and City of Davao	A	City of Davao
12	Bataan	B	Manila	44	Sulu	C	Jolo
13	Manila	A	(a) Pampanga.....	45	Occidental Mindoro..	C	Mamburao
			(b) Bulacan.....	46	La Union	C	San Fernando
			(c) Rizal				
			(d) Cavite and Cities of Cavite and Tagaytay ..				
			(e) Batangas.....				
14	Laguna and City of San Pablo	B	Santa Cruz				
15	Quezon	A	Lucena				
16	Camarines Norte.....	A	Daet				
17	Camarines Sur and City of Naga.....	A	City of Naga				
18	Albay and City of Legaspi	C	City of Legaspi				
19	Sorsogon	C	Sorsogon				
20	Catanduanes	C	Virac				
21	Masbate	C	Masbate				
22	Marinduque	C	Santa Cruz				
23	Oriental Mindoro.....	B	Calapan				
24	Romblon	C	Romblon				
25	Antique	C	San Jose de Buenavista				
26	Capiz	C	Capiz				
27	Iloilo and City of Iloilo	B	City of Iloilo				
28	Occidental Negros and City of Bacolod	A	Fabrica, Occ. Negros				
29	Oriental Negros and City of Dumaguete	B	City of Dumaguete				
30	Cebu and City of Cebu	B	City of Cebu				
31	Bohol	C	Tagbilaran				
32	Leyte and City of Ormoc	A	Tacloban				

2. This Administrative Order shall take effect March 1, 1951.

FERNANDO LOPEZ
Secretary of Agriculture and
Natural Resources

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

FORESTRY ADMINISTRATIVE ORDER No. 17

May 8, 1951

COLLECTION OF FEES INCIDENT TO THE FILING AND DISPOSITION OF PROTESTS, APPEALS AND OTHER PETITIONS IN CONNECTION WITH THE ADMINISTRATIVE SETTLEMENT OF CONTROVERSIES OF FORESTRY LICENSEES, PERMITTEES AND LESSEES, AND OF CLAIMS AND CONFLICTS ON PUBLIC FOREST LANDS, FOREST RESERVES, COMMUNAL FORESTS AND PASTURES, NATIONAL PARKS, AND OTHER SPECIAL FORESTS.

1. Pursuant to the provisions of section 79(B) and 1817 of the Revised Administrative Code, and in order to regulate the filing and disposition of claims or protests relative to public forest lands and of controversies of forestry licensees, permittees and lessees and the prosecution of appeals or other petitions against decisions or orders of the Director of Forestry, there shall be collected in the manner prescribed hereunder the following fees:

(a) *Filing of Protest or Claim.*—For the filing of a protest or claim as provided in section 4 of Forestry Administrative Order No. 6-2,

known as the Revised Rules and Regulations Governing the Promulgation of Decisions and Orders of the Director of Forestry and the Filing of Appeals therefrom to the Secretary of Agriculture and Natural Resources, as amended, dated July 1, 1941, P10 shall be paid by the protestant or claimant before the protest or claim is docketed.

The fee prescribed above shall be collected and the corresponding receipt shall be issued by the Director of Forestry if the protest or claim is filed in Manila. If the protest or claim is filed in the province, the Provincial Forester or Officer in Charge of Forest Station concerned or their respective duly authorized representative should immediately forward such protest or claim to the Manila Office together with a money order, covering the amount of P10 as herein provided, payable to the Director of Forestry, Manila.

(b) *Appeals*.—For filing an appeal from the decision or order of the Director of Forestry to the Secretary of Agriculture and Natural Resources, as provided in section 3 of Forestry Administrative Order No. 6-2, there shall be collected the amount of P10 to be paid by the appellant either to the Secretary of Agriculture and Natural Resources or to the Director of Forestry. Failure to pay the fee prescribed herein within ten days from the date the notice of appeals is filed may be sufficient cause for the dismissal or dropping of the appeal.

(c) *Orders of Execution*.—There shall be collected the amount of P5 for the issuance of an order of execution to be paid by the party requesting the execution.

(d) *Petition for Relief*.—For filing a petition for relief from the effect of a decision or order as provided in section 12 of Forestry Administrative Order No. 6-2, there shall be collected the amount of P10 to be paid by the petitioner. Failure to pay the said fee within ten days from the date the petition is filed may be sufficient ground for the dismissal or dropping of the petition.

2. *Authority of Cashiers and/or Disbursing Officers*.—The respective cashiers and/or disbursing officers of the Bureau of Forestry and of the Office of the Secretary of Agriculture and Natural Resources are hereby authorized to receive, and issue receipts for, the fees prescribed under this Order.

3. *Date of Taking Effect*.—This Order shall take effect on June 1, 1951.

2. This Administrative Order shall take effect March 1, 1951.

FERNANDO LOPEZ
*Secretary of Agriculture and
Natural Resources*

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

FORESTRY ADMINISTRATIVE ORDER No. 18

May 8, 1951

**COLLECTION OF FEES FOR CERTAIN SERVICES OF THE
BUREAU OF FORESTRY NOT SPECIFICALLY PRO-
VIDED FOR IN THE FORESTRY LAWS.**

1. Pursuant to the provisions of sections 79(B) and 1817 of the Revised Administrative Code, the following regulations are hereby promulgated:

(a) *Preparation of affidavits*.—For the preparation of affidavits by Foresters, Rangers and Forest Guards in connection with forestry license, lease or permit, a nominal fee of P2 for each affidavit prepared shall be collected.

(b) *Fee for Administering Oath on Applications*.—For administration of oath on every application for forestry license, permit or lease before a Forester, Ranger or Forest Guard, a fee of P1 shall be collected from and paid by the applicant.

(c) *Certification in connection with Application for Loans with the Rehabilitation Finance Corporation, the Philippine National Bank, or Other Entities*.—For certification regarding forestry licenses, permits, leases or applications in connection with application for such loan, there shall be collected a fee of P0.50 per hectare but in no case shall such fee be less than P2 nor more than P100. However, in case it is necessary to conduct field investigation, the licensee, permittee or lessee shall, in addition to the fee herein prescribed, pay and defray all necessary traveling expenses, subsistence and lodging of the inspecting forest officer from his official station to the place or places designated and return.

2. *Date of Taking Effect*.—This Order shall take effect on June 1, 1951.

FERNANDO LOPEZ
*Secretary of Agriculture and
Natural Resources*

Recommended by:

FLORENCIO TAMESIS
Director of Forestry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

May 1951

Nicolas P. Nicolas as Provincial Fiscal of Rizal, May 18.

Alfonso Francisco as Assistant Fiscal of Manila, May 18.

Pablo Urrea as Justice of the Peace of Rizal, Laguna, May 18.

Esteban H. Ilao as Justice of the Peace of Guiuan, Salcedo and Mercedes, Samar, May 18.

Ramon Cansino, Jr., as Solicitor, May 19.

Carlos G. Cruz as Assistant Fiscal of Manila, May 19.

Hermito C. de la Cruz as Assistant Provincial Fiscal of Samar, May 19.

Honorato Bautista as Assistant Provincial Fiscal of Lanao, May 19.

Francisco Acebedo as Justice of the Peace of San Francisco, Leyte, May 19.

June 1951

Cipriano C. Robielos as Acting City Attorney of Dansalan, in addition to Provincial Fiscal of Lanao, June 8.

Arturo Glaraga as ad interim Justice of the Peace of Manapla and Talisay, Negros Occidental, June 8.

Ernesto Nombrado as ad interim Justice of the Peace of Silago, Leyte, June 8.

(Miss) Gertrudes C. Fernandez as ad interim Justice of the Peace of Panglao, Bohol, June 8.

Remigio M. Butacan as Auxiliary Justice of the Peace of Tuguegarao, Cagayan, June 8.

Jose Aruiza as ad interim Auxiliary Justice of the Peace of San Fabian, Pangasinan, June 8.

Pedro Sara as ad interim Assistant Provincial Fiscal of Batangas, June 19.

Serafin E. Gabriel as temporary Special Counsel for Bulacan, June 29.

Antonio G. Ibarra as temporary Special Counsel for Pampanga, June 30.

July 1951

Pedro K. Coronel as acting Provincial Treasurer of Leyte, July 2.

Napoleon Dejoras as ad interim City Attorney of Iligan City, July 6.

Joventino Prado as ad interim Justice of the Peace of Milsor and Minalbac, Camarines Sur, July 6.

Honorio Fulgencio as ad interim Assistant Provincial Fiscal of Samar, July 20.

Toribio Pedrosa as ad interim City Attorney of Ormoc City, July 20.

Celso Avelino as ad interim City Attorney of Calbayog City, July 20.

Dominador S. Donato as ad interim Justice of the Peace of Bagamanoc, Catanduanes, July 20.

Conrado S. Magat as ad interim Auxiliary Justice of the Peace of Luuk, Tongkil, Panamao and Pata, Sulu, July 20.

Juan Figueroa as ad interim Assistant Provincial Fiscal of Samar, July 27.

Rodolfo Castillo as ad interim Justice of the Peace of Nasugbu and Tuy, Batangas, July 27.

(Miss) Tomasa Laforteza as ad interim Auxiliary Justice of the Peace of Badoc, Ilocos Norte, July 27.

Sofronio Hernandez as ad interim Justice of the Peace of San Fernando, Pampanga, July 31.

Municipal Officials

Bulatucan Lambac as Vice Mayor of Kidapawan, Cotabato, June 12.

Ventura A. Ladio as Mayor; Gabriel Ditalo as Vice Mayor; Lucas Busa, Emiliano Lacorte, Francisco Bagas, and Daniel Baquilod, as councilors of Maydolong, Samar, June 19.

Elegio C. Caraele as Mayor; Pelagia Acocoro as Vice Mayor; Amador Caniete, Serafin Alayon, Tampepe Penit, and Pedro Boal, as Councilors of Malangas, Zamboanga, June 23.

Juan Rumbaua as Councilor of Laguig, Cagayan, June 26.

Benito Gonzalo as Mayor; Alberto Morales as Vice Mayor; Emilio O. Abid, Antolin Sumikbay, Danser Ali, and Capitan Onos as Councilors of Quezon, Palawan, June 26.

Casimiro Mendoza as Mayor; Jose Zabala as Vice Mayor; Julian Manlavi, Gabriel Tabang, Ma-

nuel Caabay, and Gorgonia P. Sabando as Councilors of Roxas, Palawan, June 26.

Servillano Timbang as Councilor of La Paz, Tarlac, June 29.

Prudencio Tiu as Mayor; Evaristo Guico as Vice Mayor; Inocencio Go, Virgilio Ramos, Primo Bohol, and Marianito Aseniero as Councilors of Manukan, Zamboanga, June 29.

Mametro Amazan as Councilor of Santo Niño, Samar, July 3.

Pedro Dabuet and Gil Mabulay as Councilors of Wright, Samar, July 5.

Jose Nepomuceno Topacio as Councilor of Imus, Cavite, July 5.

Joseph T. Sanguila as Mayor and Victoriano Rafols as Vice Mayor of Kauswagan, Lanao, July 5.

Calixto Bautista as Councilor of San Miguel, Bulacan, July 11.

Francisco Viacrucis as Councilor of Palompon, Leyte, July 11.

Leopoldo Villacorte as Mayor and (Miss Petra Pastrana as Vice Mayor of San Ildefonso, Bulacan, July 16.

Alfaro Almira as Councilor of Mauban, Quezon, July 19.

Vicente Daigdigan and Luisito Ramos as Councilors of Balayan, Batangas, July 24.

HISTORICAL PAPERS AND DOCUMENTS

Address of His Excellency Elpidio Quirino, President of the Philippines, on the occasion of the celebration of the Fifth Anniversary of the Independence of the Philippines, on July 4, 1951, at the New Luneta, Manila:

Beloved Countrymen and Friends:

This is an entirely new afternoon of our Glorious Day as a nation. As we watched in proud review the massive power of the twin basic supports of the nation—the soldier and the worker—a sense of security crept into our being. We have been made to feel that there is added strength in our sinews. And our hearts beat to one rhythm of faith.

In this beautiful spot symbolic of our new endeavors, overlooking the hallowed grounds made rich with the holiest memories of heroic deeds and noble acts of freedom, something enchants our soul. Undoubtedly our happy attendance here affirms the validity and vigor of the Republic we established five years ago, and the free institutions that give it substance and force.

We can now tell the world that in the first five years of its life, our Republic has successfully stood the doubts of bystanders and the untruths of its enemies. And the reason lies in the intrinsic integrity of the nation. This integrity has been in many instances misrepresented, but we have shown its indestructibility because it has been built of ample and devoted investment in blood, tears, and treasure of all our generations past.

It is curious that we have been able to testify to the vigor of our Republic close on the heels of recent dogmatic predictions of its rapid deterioration and early collapse. Instead of discouraging us, those dire predictions exercised a potent effect in reinforcing our people's determination to prove the contrary. It simply reveals one peculiarity of our people, that we do not discover our latent reserves of strength and staying power until we are faced with the challenge to survive.

Day by day, we now realize that there is no special virtue in survival for its own sake. Thus, we do not struggle just to survive; we seek to survive for the opportunity to remain free—free to fulfill our genius as individuals and as a people.

And the fact that we have survived so far makes it pertinent to affirm anew why we should continue to want to do so. An anniversary like this today therefore calls for a fresh statement of our long run outlook.

We aspire to live not for this age alone, nor by ourselves alone. If we are to retain the freedom that we value and for which we want to survive, we must continually

commit ourselves in daily thought and action to the duty of maintaining the healthy exercise of our civil rights and liberties, of upholding the dignity and worth of the human person, of restoring the full sense of community life among individuals, among neighbors, and among nations.

Fortunately, our Republic has won a respected place however modest in the family of nations. It is known always to have responded to its commitments as a responsible member. Because of its sense of community, it has identified its voice with every argument for self-determination of small peoples, for resistance to aggression, for broad human rights. Knowing that there can be no half-way house between slavery and freedom, it has ranged itself on the side of the free world and is contributing its share of the sacrifice to keep it free. This is why our boys are fighting in Korea.

We have no pretensions to impose on our neighbors by claiming any special wisdom. We tell no one how to run his own house; we just see to our own, set it in order, and seek to show thereby the merits of our democratic system in which we hope to grow, developing our potentialities to the limit. We sponsor no hate drives. We organize no smear campaigns. We have always endeavored to maintain the friendliest understanding and cooperation. We take the chance when we can to form a positive basis for increasing common counsel on problems easier to resolve by common action. This is why we invited our neighbors to the Baguio Conference of 1950.

In desiring to achieve peace for ourselves and with our neighbors, we are resolved to make our social order a direct expression of the peace in our spirit, which we distinguish from mere insensibility and consequent stagnation. This means a continuing effort, a continuing conflict even—but a conflict productive of creative change, of creative peace.

Destiny has thrown us into a special relation with the United States. We can say for today that that relation has had something to do, in addition to our own efforts, with the large measure of our recovery from the war, with the security of our freedom and stability of our democratic institutions. There can be no false pride about this fact, nor feeling of subserviency to a friend who unselfishly recognized our right to be free and stay free. America and the Philippines have a common objective which we now regard as a mission—to extend the borders of democracy everywhere.

In a shrunken and shrinking world, people have to get used to the fact, not so much of independence absolute and complete, as of inter-dependence and mutual assistance that nourishes human dignity and self-respect. And this is why we are a loyal and active member of the United Nations.

We have looked upon the battle of Korea as a struggle for peace, the peace of the world, and the peace of man-

kind. Our world community life can only be maintained in an atmosphere of universal tranquillity; and as long as one group of nations disturbs that tranquillity for any motive, economic, military, or ideological, our individual life as a nation will always be menaced.

We long for the day, the arrival of that moment, when once and for all, in the battlefields of Korea, the belligerents may come to an honest understanding—with the interests of peace safeguarded and the unification and liberation of the Korean people assured. We are, therefore, for the immediate cessation of hostilities and the honest settlement of the issues that have made our present world one of turmoil and senseless loss of life, property, and human values.

We want to live a life of substance so that we may be never a liability, but an asset to world prosperity and advancement. This is why we are engaged in total economic mobilization. Our initial efforts are bearing sufficient fruit to show we are on the right path in attacking poverty by organized production. The gradual conquest of poverty along with more equitable sharing of the fruits of production strikes at the root of social discontent.

Our efforts for the mobilization of our productive resources will continue to be planned, the state using its main strength to determine indirectly the broad level and conditions of economic activity and to make a success of projects clearly its own responsibility.

In striving to create plenty as a means to root out discontent, we are not merely providing our people with a life of substance and contentment and a guarantee to the preservation of our freedom. We are creating the condition of our country's growth and continuance. A high living standard is, of course, not enough. Man will want more than bread to live by.

The future of a free social order in this country depends on the kind of men it produces. Judging by recent events reflecting social convulsions, there can be no telling whether tyranny may not enter upon this country. The only bar against it is a large breed of resolute men.

It is the greatest challenge and opportunity of our times to continue producing that large resolute breed, by whose consistent practice of democracy our sense of the value of the individual can be kept alive and strong, by whose loyalty to it our relation to our kind can remain square and fruitful and rich.

We are determined that our citizens will not be deprived of their meaningful role in our social order. We are determined to democratize the benefits of our free institutions, lifting those below to the level of prosperous civilized life. Democracy being a process, not a conclusion, we accept our commitments to it as a continuing, endless experience. Thus our program of action is of long-range, requiring resolute men of vision to carry it to fulfillment.

Democracy has often been taken by its enemies as another name for division. Indeed, a frequent threat to democracy is division. We cannot deny that in our national life we have had and undoubtedly will have moments of disconcerting division.

But it is also the virtue of our order that such moments of division are more apparent than real, and that, in the perilous hour, it is the free consideration of a generous diversity of outlook that best prepares us for decision and united action. We have shown our maturity in this regard.

Wherever democracy is a fighting creed, such diversity of outlook anticipates its most historic resolutions and decisive victories.

And so it is a part of our commitment to democracy that we constantly practice patience and tolerance with its seemingly slow processes arising from differences of opinion, conflicts of individual aspirations, clashes of personal or group motivations.

We want to establish that our unity as a people loyal to democracy and freedom will not be impaired by those diversities and differences. They may seem to obstruct quick action, but in effect they allow a wide margin for a just decision that can command the most ample adherence. What is essential is national discipline, the enlightened obedience to the will of the greater number in contrast to the will of a self-elected few.

We have just witnessed a show of the armed might of our young Republic. Disciplined and devoted to democracy, these men are gallantly doing their part in our nation-building. They have a leadership today that has strengthened the trust and security of our people. They are building upon a tradition of racial heroism whose loyalty to liberty is finding fresh affirmation wherever it is in extreme peril.

We are proud of their predecessors. We are equally proud of them who now are holding up the standard. Peace is not easily to be restored to our countryside. But it is on the way—because we have these men. Aside from talking the language of force, as best understood by aggressive subverters, they bear a positive mission of peace and production now being fulfilled in new settlements for the landless on our virgin plains.

Certainly, the local atmosphere has cleared because of the efforts of these men. You can now call them your real protectors and defenders. Agriculture, industry, and commerce are receiving the proper incentives because a sense of security pervades the national atmosphere. This condition has even enhanced our credit abroad.

Of course, we can not attribute to them exclusively the arrival of this new era. No one individual or any particular group of individuals can claim that our nation's recovery and progress since independence are their special work. But they have helped prepare the ground for our national

achievement. This is the achievement of our people as a whole by reason, and irrespective of the diversities of outlook and approach which must of necessity be peculiar to a democracy like ours.

What we have heretofore accomplished is the manifestation of that national instinct which has incessantly prodded our people to face dangers, to rebuild our country every time that an invader destroys it, to rise every time we fall, to feel stronger every time we rise, never discouraged, never dismayed, never despairing of anything. There is an Unseen Hand that subtly guides and directs our national conscience in moments of peril and adversity. We only need to appeal to It in all fervor and sincerity so that It may touch and raise our long-suffering people with Its magic wand. That is the secret of our national strength; that is the virtue of Filipino genius; and that is our hope for continued national existence.

Our prayer today must be that we keep up that spirit and the good work. We can do that because we have a Republic that has a living faith in its right to live free and untrammelled. Like the kingdom of God, that faith and democracy lie in our hearts.

My beloved countrymen, again I beseech you: give me your hands that mine may be kept steady.

Thirty-third monthly radio chat of His Excellency Elpidio Quirino, President of the Philippines, broadcast from Malacañan, July 15, 1951:

Fellow Countrymen:

Our fifth Independence anniversary has given us opportunity to take an inventory of our assets and liabilities as a nation. It is good to report that our people have come out of the experience deeply reassured. We now have more confidence in our strength and endurance. More than anything else, we are convinced that we know our bearings and that we are steering our way right ahead.

We have to guard, however, against self-satisfaction. We have not moved forward as much as we could have desired and done under normal conditions. We must exert strenuous efforts, considering the magnitude of the monumental tasks still confronting us.

Indeed, as I said before and do not mind saying again, our tasks, far from complete, cannot be completed within the lifetime of this generation. We may allow ourselves the prideful feeling that this generation has been able to do what has been expected of it despite its initial handicaps and limitations. You and I of this generation can be happy that we are turning this country over to the next, clear in our conscience that we have done our best. But we must go further, harder, and deeper than that.

We must, specifically, keep unimpaired for our children the assurance that the sacrifices of our people in the last war have not been in vain and are not to be lightly ignored in any arrangement for the peace and stability of our part of the world. Our goal is not the present satisfaction of our material longing, and convenience.

We will resist with all our soul any temptation to turn back on the spirit that has united, and kept our people united, through all the trying vicissitudes of foreign aggression, subjection, and abuse. We have evolved a national soul that other peoples have come to respect and honor.

I say that there can be no honor and security in the benefits of any material recovery for our devastated land that are to be purchased by a betrayal of the faith of those who died that we might live as free men.

We are joined with the free world today in resisting aggression. We have become familiar with the fruits of aggression in the destruction, hate, and misery it breeds and leaves in its cruel and bloody trail. We cannot in conscience be a willing party to any transaction that would give it speedy clearance to rear again its ugly head in our midst, by simply writing off its accountability at the behest of a cherished friend. We are not rancorous or revengeful. But we cannot sustain such a callow gesture of false generosity and keep our self-respect.

The lesson of aggression has not come easy to our people for having been its hapless victims. It may seem a light matter to those who can afford to cover it up by the abundance of their material resources and their prodigal expenditure. Not to us, who bear its permanent scars in our soul as a nation. Remember that we have been ravaged, not through our fault but because of our loyalty to a friend and protector.

The lesson of our nation's partial recovery by stern, heroic effort in five years of freedom would be lost on us and the world if we should now be frivolous and careless as to view without protest an arrangement that passes understanding for its insensibility to the justice of our claim as a victim of wanton aggression.

Aggression is aggression under whatever country and flag it is pursued. It will not make for its discouragement and ultimate disappearance for a small and helpless victim to condone the obligations of conviction in the courts and conscience of a just and free community.

In the captive totalitarian world, the rulers make no pretense that they operate on any other principle than that the end justifies the means. Almost surreptitiously it is now asked why the free world should be any the more squeamish.

Our position is not to be viewed in the light of a vengeful exaction of our pound of flesh. We do not rely on a punitive peace to heal an injury reaching into the most intimate depths of our people's spirit.

But we do look for an honest acknowledgment of wrong done, for a manifest disposition to atone in reasonable measure for the gross cruelties and destruction visited upon a small people for their loyalty to another nation that championed a good cause. We look for some testament however modest to affirm genuine moral rebirth and provide against repetition of the tragic experience for us and others similarly situated. Just now we do not see any indication.

We get a strange proposal providing a brash and bland departure in studied silence on, and avoidance of, the moral issue crucial to the settlement of a lasting peace in the hearts of aggressor and victim. We are faced with a lavish solicitude to facilitate not the healing of broken hearts and relations but the restoration of a defeated aggressor's potentials that might be used to dictate to his neighbors.

The proposal is claimed to be a milestone in international reconciliation. It might be. We would not give it serious consideration were it not announced that it carries the approval of no less than the recognized leader of the free world today. It taxes our belief. It fills us with dismay. It conciliates the powerful who flouted the law and the decent instincts of humanity. It insures all possible assistance to the aggressor who now has not long to wait to be able to impose with his wonted assurance. And it rides roughshod over the sensibilities and memories of his mingled victims.

This is a situation that our people must develop the discipline to meet and contain. Our injury has been deep and so is our consequent fear of curious designs to repair it by doles on the side.

If peace is to come and abide with us, and between us and our neighbors, we must look to a fair and firm foundation that meets with free and common acceptance in the conscience of all the peoples concerned, especially in the face of spontaneous recognition and affirmation of readiness to repair within the capacity and limitations of the author of our sufferings.

Fellow countrymen, this we understand for ourselves: We do not propose to sell our heroic heritage short. Without underestimating the judgment of others, we cannot, in the matter of aggression and its accountabilities, disregard our somber experience as a people without being false to ourselves. And we cannot be false to ourselves without being false to our neighbors everywhere.

Our security in this part of the world is intimately tied up with our sense of what is just in the settlement of peace

in the Far East—peace based on mutual self-respect and not on mathematical calculations of what one can give to the other as material satisfaction for wrongs committed. There are more elevating considerations and motivations that would better secure our neighborly understanding and friendly relations. And we are not wanting in nobility. Personally, I would not allow my children and my people to inherit hate, but I would not disinherit them either of the national self-respect.

We will adhere to this vision. What difficulties this will entail, we may not be able completely to anticipate. We can only rely on the good intentions of real friends and trust to the infinite wisdom of Divine Providence. Certainly, we must support our faith with works and dogged determination.

Let that be our fresh resolve as we begin the sixth year of our Republic.

Extemporaneous after-luncheon speeches of President Elpidio Quirino and Governor Thomas Dewey of New York in a luncheon given by the President in honor of the latter at Malacañan, July 19, 1951:

PRESIDENT QUIRINO'S EXTEMPOREANEOUS SPEECH

Fifty years ago a Commodore Dewey came here. Today it is our pleasure to welcome a new Dewey. He finds a new atmosphere, a new mood, an independent country.

When Admiral Dewey entered Manila Bay, the people of the Philippines didn't know what his purpose was. He was given no specific instructions on what to do after destroying the Spanish fleet. But as a result of his coming, the Philippines was placed under the tutelage of the United States.

Admiral Dewey became a controversial figure in our history up to July 4, 1946. Some thought he was merely an instrument of American imperialists, while others thought he was a representative of democracy, and came to Manila to help us win our freedom. All doubts were dispelled on July 4, 1946, when America gave us our independence.

Fifty years after that first visit, and five years after Philippine independence, another Dewey comes, presumably also without any specific instructions from his government and even disclaims any official representation in his visit in the Philippines but the same instinct which was manifested by Admiral Dewey's visit when he came to the Philippines gives us the assurance that he also embodies our hope of perpetuating our personality as a nation under a democratic system.

Governor Dewey may not want to commit himself. He has not so far revealed the purpose of his visit. I know he didn't come all this distance just for his health. As a student of world history, I know he is jotting down the

most notable facts and circumstances that he observes here which may be useful to his government and people to help enhance the name and prestige of the United States.

Well, I am glad that Governor Dewey reached our country and the other countries of Southeast Asia so that he may have a composite picture of the true situation of the group of nations around us and we appreciate his visit. I hope that he will look at us with glasses of different color, that he may even magnify what he sees if possible so that he will be able to transmit clearly to America how we feel and how we react. It is my hope that Governor Dewey's visit to the Philippines will bear the same beneficial results as that of Admiral Dewey.

May I say to Governor Dewey that first and foremost it is our security which is in the balance today. It is no longer independence or our personality as a nation that worries us. It is our security that I hope we can impress on Governor Dewey as our main concern so that when he returns to the United States he can stress to his countrymen that Philippine security must be given America's preferential consideration. We in the Philippines initiated the idea of a Pacific Pact in 1949. We want that idea carried out now. We hope he can help us when he returns to America. The Philippines must be the anchor of such a Pacific security pact.

GOVERNOR DEWEY'S EXTEMPORANEOUS REMARKS

It is true that my distinguished fifth cousin came here without any definite instructions from our government and it is equally true that I have no instructions from my government since I do not represent it. In fact I am the administration's most vigorous critic.

I have listened with great admiration and typical American respect to the eloquent representatives of the Philippine Government. Now I realize, perhaps better than before, that the Government of the Philippines is headed by leaders who do represent it because they are able to speak eloquently with a tongue which touches the heart. President Quirino and his appointed representatives very adequately and correctly represent the sentiment of the people.

As a matter of fact, I have learned something very important after the opportunity of listening to the eloquent representatives of the Government of the Philippines. They have a very natural way of expressing the sentiment of their people which will very well serve many of us in the United States to emulate.

Regarding my presence here . . . I am simply a curious American. . . I have been such all my life. Now and

then the state and national governments are faced with problems of foreign affairs, which are one of my main preoccupations, and I find it almost impossible to accept predigested conclusions handed to me by a variety of people.

People often believe they have reached a conclusion. Then when they travel to countries to look more closely, they would invariably find a new conclusion. This is particularly true of the Pacific where the United States, with customary zeal for its institutions, contributes to the concept of freedom, liberty, and justice.

I think that of all nations west of San Francisco and of Honolulu, the Philippines has carried to the highest degree in the history of the world, this part of the world, the new idea that for two or three thousand years did not exist—the importance of the individual is greater than the importance of the state. It makes it peculiar for the Government of the Philippines that the Filipinos having been born and raised in that concept, have brought to the Pacific and to Asia an example of the importance of the individual, of education, of a good standard of living, of the freedom of conscience, and of the freedom of speech which have not been known in Asia.

After five years the Republic of the Philippines is already a model for all Asia. Five years have brought the Philippines from total destruction during the occupation to the point where the Government has balanced its budget and bolstered its security—significant facts which are attracting world attention.

As to the question of security of the Philippines, I think it quite significant that so far as I can recall there has never been a time in the history of the United States that the President officially announced as the policy of the United States that if a given nation was invaded, the United States would immediately go to war. Such proposals made in connection with the Atlantic Treaty were bitterly contested, bitterly opposed, bitterly fought, and finally adopted by divided vote and implemented only after they have been ratified by the rest of the countries affected. But when the President of the United States announced as official policy of our government that if the Philippines should ever be invaded, the United States would immediately go to war, not one voice in the United States Congress or anywhere was raised against that.

No nation on earth has enjoyed closer feelings of brotherhood with the United States than the Philippines, and I call your attention to the fact that the Philippines are 6,000 miles from the United States, as distinguished from the nations more important to our security.

To me, therefore, it is very significant that beneath and beyond all current discussions of matters of great impor-

tance involving the Japanese treaty, our fundamental relationship is so great that the President without consulting the U. S. Senate or the U. S. House of Representatives announced a policy of mutual self-defense.

We are together despite all strains and stress of post-war period, despite all difficulties arising because people speak their mind, as the communists dare not do, in a feeling of brotherhood. It is entirely true that because of the goodwill and enthusiastic feeling that we bear for each other as members of a single family with equality and unanimity of purpose, we will be stronger a year from today.

I am equally sure that the program for mutual defense will be gratifying to each and everyone, to both the Philippines and the United States, and that Under the most distinguished leadership of President Quirino and with the eloquence and charm of his Foreign Secretary Carlos P. Romulo, the relationship between our countries will grow firmly and securely and will provide the cornerstone for the ultimate realization of the dream first launched by President Quirino of a united Pacific against aggression.

Extemporaneous speech of President Elpidio Quirino before the Provincial Governors and City Mayors' Convention, July 31, 1951:

I have asked you to come today for a conference which we may extend another day or two to consider in general terms serious problems affecting the security of the state and the stability of the nation.

We are approaching the date when we are supposed to submit our final stand on the Japanese peace treaty the draft of which was submitted to us more than two or three weeks ago and which has been the subject of general discussion here and abroad.

Although there is an understanding between the major parties in the Philippines that our foreign policy should be bipartisan, that no party should take advantage of the other in the presentation of the issues or solutions offered, of late, however, we have noticed a deviation from this attitude.

This being a pre-electoral period, our foreign policy and our stand on the Japanese treaty may become a partisan issue contrary to our fundamental understanding of a bipartisan attitude on foreign affairs. Already in the United States, we are hearing reports that several prominent American citizens and officials are giving the impression to the people of America as well as here, that our attitude on the Japanese peace treaty is nothing but a political stunt and that the leaders of this country are playing the electorate.

The Philippine Congress and the Cabinet and the Council of State—the supreme advisory bodies of the Government—have already gone on record as unequivocally against the treaty. This stand is unanimous and decisive.

It remains, however, for the people of this country and the United States as well as the rest of the world whose interests are affected by the Japanese treaty to know what our local executives—the governors, the city mayors, and even the municipal and other officials of our different political subdivisions—have to say on this matter, especially because it involves the question of security, not only of the local security of the state, but also the international security of our country.

Heretofore, provincial boards and city councils as well as municipal boards have been approving resolutions endorsing the attitude of the central government and its leaders regarding our stand on the Japanese peace treaty. But all these expressions and attitudes taken by the local public officials are merely desultory.

There is need for an unmistakable, a solid and strong stand in support of the attitude we have heretofore taken on the Japanese treaty. It is necessary that we present a solid front.

The issue is no longer a partisan or merely a political one. It is a national issue on which this country must express its stand unequivocally, solidly, and determinedly.

This is the reason why I called you for conference and consultation so that all members of the body politic from the smallest political unit to the highest hierarchy of our Government may define their solid stand.

The people of America as well as the people of Japan **specially** must know that we are not presenting our claim capriciously, that we have studied our position thoroughly. The economic provisions of the treaty are well understood by us. We know the economic position of Japan, its potentialities, and its capacity to meet its obligations now or in the future.

We honestly press our claims because of our personal knowledge of the damages wrought by Japan on our country. The main thing for us therefore is, to present a united front, determined to push through our claims, not because we want our "pound of flesh" from Japan, but because we know it is the moral duty of Japan to pay reparations for the wrong that she committed upon this country.

We may not be able to collect materially or financially, or even in kind, all the amount that we expect Japan to pay to us. But certainly, there must be a recognition of our right to collect from Japan that will serve as a moral deterrent should Japan have any aggressive design again on this country.

We must crystallize our stand and put it in black and white and present it before August 13, the last day, I think, set for the final presentation of the draft. We must, without loss of time, express ourselves in a manner that the United States Government and all the prospective signatories may consider as our unequivocal position.

I also want our local executives to express their views or their support on the issue of the security of the Philippines. I think you will remember that as early as March of 1949, when the Atlantic Pact was being considered and was about to be put into final form, I did announce that a similar pact should be adopted for our protection in the Pacific. I launched the idea not only in press statements but also in speeches, including my address before the U. S. Senate when I was invited to the United States in August, 1949.

I have expressed my desire that in the South Pacific, a similar pact should be adopted with the backing of the United States. While that proposal was not met with enthusiasm at the time by the State Department in Washington, I knew, I could observe, and I could feel when I was in the United States in August, 1949, that the American people, especially the leaders of the American people in the Senate, were convinced of the wisdom and necessity of adopting the measure for the protection of the Pacific countries menaced by Communism.

The observation then of Secretary Dean Acheson was, that the proposal was made prematurely, but I knew with my personal contact with the people in the United States and their leaders that someday in the near future, America would be convinced of the necessity of such a pact.

I am very happy to have received confirmation of the wisdom of that suggestion in recent months. Although the United States was only expected at that time to give its moral backing to any pact that we organized for the protection of this region, the United States now comes out offering to be signatory to that pact with such countries as Australia and New Zealand, and with the Philippines if we want to.

At the beginning, I thought that to place the Philippines under an obligation to the United States for our own protection by entering into a mutual defense pact with the United States, may mean the the conversion of this country to a protectorate. As I view the question now from the point of view of national security, it is not only the United States that desires to join us in the pact but also other countries.

So, I propose that you express in a resolution your opinion as executives of the political subdivisions of this country, giving your unqualified support and endorsement

of such a pact for our own security, not only during these troubled days but especially in the future.

I suggest that you adopt a resolution indorsing our definite stand against the Japanese treaty provisions regarding reparations which do not satisfy our status as sovereign and free people; and also an unequivocal stand on the security of the Philippines to be guaranteed in the Pacific pact which may be entered into in the future.

My friends, I think it is time that we tell our people today and henceforth that if we are going to continue to remain a nation, a sovereign government, an independent democracy, we must all pull together and show to the world that there is one and only one Filipino people, determined to defend its national existence.

I am saying this because in the coming elections, there will be heated discussions, each one claiming credit for accomplishments achieved by the country.

At times such as this, we are up to forget our national responsibilities and deny to our nation the credit for the achievements that we have so far been able to accomplish during the last few years.

The country is now developing into a prosperous one. It is not because the administration has done that, or this department has done it.

I do not claim, for example, to have increased rice production alone; I do not claim to have increased the hemp production alone; I do not claim to have increased our international commerce alone; and I do not claim to have maintained peace and order and restored tranquility of the country alone. But I do say that our people and their representatives have secured the proper atmosphere so that we can plant our staple crops, enhance international commerce, and maintain relative tranquility in our country.

I have not planted a single stalk of rice, I have not planted a single plant of hemp, and I have not invested a single centavo at all. I have not even held a knife and gone to the field to fight the Huks. I have not shed a single drop of blood. But I do say that you and I in the administration, Liberals or Nacionalistas or any other party members who who have cooperated to secure the proper atmosphere so that our people could grow rice, expand our commerce, and maintain peace and order, have made possible this progress.

The whole world looks upon us now as a people—not as Nacionalistas or as Liberals. The whole world is analyzing how we have been able to lift ourselves from the morass of economic depression and turbulent political situations. The credit for these achievements belongs to the people. The credit belongs to the country.

From now on, I would like to discourage any talk on our part, we the responsible officials of the Government, attributing to a single, individual action, anything that has contributed to our stability and growth as a nation. This is all our work. We have all cooperated in this. Our people must be given credit for our accomplishment and no one individual, no department, no group, should boast of having done this or that.

Now, my friends, I have here a resolution which I wish you to consider. This conference of governors and city mayors, if it wants to prove its effective intervention, especially at this moment, in the shaping of our national policies, has an opportunity to do so, as regards the Japanese peace treaty and the Pacific security pact. I turn this over to you and I would like you to discuss the matter thoroughly.

I wish that you would convert your conference into a seminar. I want to give an opportunity to all the members of the executive departments, the leaders of Congress, and other departments of the Government, to give a correct appraisal and estimation of the work we have accomplished so far. And let us make this a lively topic of discussion with our people. I believe that in these political campaigns now taking place, the discussion of the vital problems of the country confronting us, will be more pressing if you, the leaders of the provinces and cities, were to take your assigned places in indoctrinating our people on the development of the affairs of the state, laying aside the minor personal issues which have frequently become heated topics of discussion in political meetings, especially in the provinces.

DECISIONS OF THE SUPREME COURT

[No. L-2015. January 6, 1950]

LUISA CRUZ VDA. DE JOSE ET AL., plaintiffs and appellants,
vs. EUGENIA DE LA PAZ, defendant and appellee

DESCENT AND DISTRIBUTION; "RESERVA VIUDAL"; SURVIVING SPOUSE
CONTRACTING SECOND MARRIAGE BUT NO CHILDREN IN FIRST
MARRIAGE.—Article 968 of the Civil Code does not apply to
a surviving spouse who contracts a second marriage having
no children of the first marriage.

APPEAL from a judgment of the Court of First Instance
of Rizal. Gonzalez, J.

The facts are stated in the opinion of the court.

Teofilo Mendoza for appellants.

Jose P. Santos for appellee.

BENGZON, J.:

This litigation concerning a parcel of land in the municipality of Cainta was submitted to the Court of First Instance of Rizal upon a stipulation of facts. From a decision dismissing the case, the plaintiffs have appealed, and they claim that the court *a quo* erred in disregarding certain portions of the stipulation and consequently in absolving the defendant.

Vivencio Cruz married Magdalena Domingo in 1886. Magdalena died in 1897. In 1911 Vivencio Cruz married Fidela Lira. He died in 1940, leaving a testament, the fifth clause of which reads as follows:

Quinto.—Lego a mi esposa Fidela Lira la parte de gananciales que me corresponde en los bienes que hemos adquirido entre de nuestro matrimonio; lego también a la misma el terreno palayero de cinco (5) balitas en el sitio de Tatlong Cauayan, dentro de la jurisdicción del municipio de Cainta, provincia de Rizal, segun el plano II-4653 con un area de 35,949 metros cuadrados, con la condición de que haga renuncia de su derecho de usufructo que señala la ley sobre la porción de los bienes que mis hijos me han de heredar, de lo contrario y si no se hace tal renuncia, este legado no tendra valor y efecto alguno."

The children mentioned in this paragraph are the plaintiffs in this case, being the offspring of Vivencio Cruz with his first wife Magdalena Domingo. (Fidela Lira bore him no children.) The lot described therein is the land now in dispute, which the defendant possesses as successor in interest of Fidela Lira, who got the land pursuant to the testament of Vivencio Cruz above mentioned.

Plaintiffs contend (1) that the land should be declared as reservable property and (2) that they are entitled to the possession of the same upon the second marriage of

Fidela Lira in 1941 to Angelo Javier or at least after her death in February, 1945.

Defendant replies that the plaintiffs are estopped to claim such reservation, inasmuch as they agreed to the terms of the testament above recited, whereby the lot was bequeathed to Fidela Lira in exchange for her usufructuary rights. The plaintiffs counter with the assertion that the legacy was null and void, because the property belonged exclusively to their mother Magdalena, and that it passed to the possession of Vivencio Cruz merely as a trustee.

Magdalena's exclusive ownership is flatly denied by the defendant.

The stipulation of facts contains this statement about the realty in dispute:

"Que la parcela de terreno arriba descrito era parte de los bienes que Magdalena Domingo dejó a su fallecimiento sin liquidar, en poder de su esposo Vivencio Cruz, como conjuge superstite; y por tal motivo éste continuó en posesión de dichos bienes hasta su fallecimiento (de Vivencio Cruz), como así se hizo constar en el párrafo tercero de su referido testamento."

It is not clear from the above that the property was private property of Magdalena. If it were paraphernal, the phrase "dejó a su fallecimiento sin liquidar" would be out of place, because usually no liquidation is made of paraphernal—but of *conjugal* property.¹ On the other hand, it is not inaccurate to refer to conjugal property as property which Magdalena "dejó a su fallecimiento" because in truth she has a half interest in such property. This doubt, however, is dispelled by the third paragraph in the testament of Vivencio Cruz which, denying that Magdalena had brought landed paraphernal property to the marriage, implies necessarily that this immovable property was conjugal. It says, "tanto mi primera como mi actual esposa (referring to Fidela Lira) no han aportado en nuestro matrimonio ninguna clase de bien inmueble." Note that the testament is made a part of the stipulation of facts.

Besides there is a *prima facie* presumption that the property in the hands of the spouses is conjugal.² Wherefore, all the arguments of the plaintiffs founded upon the alleged exclusive ownership of the property by their mother Magdalena Domingo have no persuasive force; and the trial judge did not err in refusing to hold that the lot was paraphernal property of Magdalena.

Plaintiffs might argue that, granting the lot was community property, still they are entitled to one-half thereof

¹ It is the duty of a husband, upon the death of his wife to liquidate the affairs of the conjugal partnership without delay. (Pamittan vs. Lasam, 60 Phil., 908.)

² Article 1407, Civil Code, Sison vs. Ambalada, 30 Phil., 118; Vilorio vs. Aquino, 28 Phil., 258.

as heirs of their mother Magdalena. However, they are not in a position to repudiate the provisions of the testament of their father under which they enjoyed the benefits of the renunciation effected by Fidela Lira in exchange for the legacy of this lot. Anyway this was not their proposition in the lower court, wherein they asserted in the complaint that Vivencio Cruz *was the owner* of the property because he had inherited it from the relatives of his wife Magdalena Domingo.

Plaintiffs invoke article 968 of the Civil Code which provides that "the widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the first marriage the ownership of all the property acquired from the deceased spouse by will, by intestate succession, by donation, or by any other lucrative title; but not his or her half of the conjugal property." They maintain that according to this article Fidela was duty bound to reserve to them this particular lot which she had acquired from the deceased Vivencio Cruz. On this point we think the appellee is correct in pointing out that the article does not apply, because Fidela, who contracted a second marriage, *did not have children in her first marriage with Vivencio Cruz.*

"Persona obligada a reservar.—Se impone la obligación al cónyuge sobreviviente que tenga hijos del matrimonio disuelto o descendientes de esos hijos, que posea bienes de los declarados reservables en los artículos 968 y 969, y que, o contraiga segundas nupcias, o tenga en estado de viudez un hijo natural reconocido." (Manresa, Vol. VII, 6th Ed., p. 246.)

Wherefore, finding no reason to reverse the appealed judgment, we hereby affirm it, with costs. So ordered.

Moran, C. J., Ozaeta, Parás, Pablo, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Judgment affirmed.

[No. L-2569. January 13, 1950]

GOTAMCO LUMBER COMPANY, petitioner, *vs.* THE COURT OF INDUSTRIAL RELATIONS and NATIONAL LABOR UNION, respondents.

1. EMPLOYERS AND LABORERS; COURT OF INDUSTRIAL RELATIONS; POWER TO FIX WAGES.—In case there is a dispute as to salaries or wages between an industrial or commercial establishment and its laborers, the Court of Industrial Relations has, by law, the power to fix just and reasonable wages, in order to peacefully solve the dispute and avoid the calamitous effects of a strike.
2. ID.; COMPENSATION, OVERTIME WORK; PERMIT FROM DEPARTMENT OF LABOR; WHO IS BOUND TO SECURE.—Commonwealth Act No. 444, imposes the duty upon the employer to secure the permit for overtime work and the latter may not therefore be heard to plead his own neglect as exemption or defense. The employee, in rendering extra service at the request of

his employer has a right to assume that the latter has complied with the requirements of the law, and therefore has obtained the required permission from the Department of Labor.

PETITION to review on certiorari a decision of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Paredes, Diaz & Poblador for petitioner.

Juan R. Maralit for respondent Court of Industrial Relations.

Eulogio R. Lerum for respondent Labor Union.

BENGZON, J.:

The petitioner, a corporation organized and existing under our laws, complains of a decision, dated July 9, 1948, of the respondent Court of Industrial Relations. It alleges:

(1) that the decision is contrary to law because such Court has no power to grant increases of wages which are above the minimum fixed by it;

(2) that Marino Carillo was not dismissed for his union activities, but for negligence and misconduct;

(3) that the recovery of overtime pay for services rendered without any permit from the Secretary of Labor is contrary to law; and

(4) that the ruling of this Court in *Montera vs. Court of Industrial Relations*, G. R. No. L-1340, has been violated.

At the outset we may dismiss the second ground, because it involves a question of fact, and we have time and again announced the proposition that we will not ordinarily revise the factual findings of the respondent court.

Regarding the first point, it appears that on October 15, 1947, the National Labor Union submitted eight demands to the management of the Gotamco Lumber Company. On October 20, the same Union filed with the Court of Industrial Relations the same eight demands, and asserted that the failure of the Gotamco Lumber Company to reply to their petition gave rise to an industrial dispute between said company and its laborers, which was likely to cause a strike or lockout requiring the prompt intervention of the industrial court. The pertinent demands were:

"1. That the company shall pay a minimum wage of P7 daily to its laborers and a general increase of 20 per cent in the salaries and wages of those at present receiving more than this minimum wage;

"2. That all overtime work and all work done on Sundays and legal holidays be paid an additional 50 per cent and those who have heretofore rendered overtime work be immediately paid;

"3. That all laborers and employees be given an annual vacation leave of 15 days with pay;

"4. That in case of accident or illness the employees and laborers concerned be given free hospitalization and paid their full salaries and wages during the period that they would be unable to work; * * *".

After hearing the parties and their evidence, the Honorable Arsenio Roldan, Presiding Judge, in a carefully prepared decision, citing facts and circumstances, reached the conclusion that the Gotamco Lumber Company should be ordered, as it was ordered, to grant to all of its laborers and employees the following increases, effective October 21, 1947:

"P5.50 a day as minimum wage for apprentice, extra, new, casual, unskilled or common laborer. In other words, those receiving less than P5 each a day shall have their wages adjusted to P5.50 each a day.

"Apprentices should not exceed 20 per cent of the total number of laborers employed. (Secs. 5, 6, Commonwealth Act No. 103, as amended.)

"15 per cent increase for those who are receiving from P5 to P7 each a day.

"10 per cent increase for those who are receiving above P7 each a day.

"For the monthly salaried employees:

"P143 a month, as minimum salary. (Equivalent to P5.50 a day times 26 working days.

"15 per cent increase for those who are receiving more than P143 to P182 each a month. (P182 equivalent to P7 a day times 26 working days)

"10 per cent increase for those who are receiving above P182 each a month."

Explaining its first ground of complaint, the petitioner alleges that the respondent court fixed a minimum wage, and ordered "a blanket increase of all salaries and wages which are far above the minimum fixed by it." Petitioner wherefore contends that the respondent court has no power to order the increase of wages which are above the minimum already prescribed by it. As applied to the decision, petitioner argues, in effect, that after fixing P5.50 as minimum, the respondent court could not further decree an increase of 15 percent to those receiving from P5 to P7 per day, and an increase of 10 percent to those receiving more than P7 a day.

It must be noted that the P5.50 minimum wage is given to apprentices, new, unskilled laborers, etc., whereas the additional 15 per cent and 10 per cent is awarded to other kinds of laborers (obviously the skilled ones). In effect the court was fixing another minimum wage for those receiving more than P5 a day (the skilled workers). So that granting, for the sake of argument that the respondent court may not go beyond fixing a minimum wage, what it performed in this instance was nothing more than fixing minimum wages for different kinds of laborers. Anyway we have already held in *Caltex (Philippines), Inc. vs. National Labor Union*, L-1412 (46 Off. Gaz. [Supp. to No. 1],

113) that in case there is a dispute as to salaries or wages between an industrial or commercial establishment and its laborers, the Court of Industrial Relations has, by law, the power to fix just and reasonable wages, in order to peacefully solve the dispute and avoid the calamitous effects of a strike. (The Shell Company of the Philippines, Limited, *vs.* National Labor Union, L-1309, 46 Off. Gaz. [Supp. to No. 1], 97.) (See also *Leyte Land Transportation vs. Leyte Farmers' & Laborers' Union*, L-1377, 45 Off. Gaz., 4862.)

As a matter of fact in the last case, we upheld an order of the respondent court directing the transportation company to grant its several employees, drivers, conductors and laborers an increase in wages at various rates. We said, "there can be no doubt about the propriety (of the raises) since said court is impliedly empowered to do so under section 20 of Commonwealth Act No. 103."

The decision now under review grants to all the workers and employees of the company "50 per cent additional compensation for work performed in excess of eight hours a day including Sundays and legal holidays effective October 21, 1947." The petitioner maintains that as the overtime work had been performed without a permit from the Department of Labor, no extra compensation should be authorized. Several decisions of this Court are invoked. But those decisions were based on the reasoning that "as both the laborer and employer are duty bound" to secure the permit from the Department of Labor, both were *in pari delicto*. However, the present law in effect imposes that duty upon the employer (Commonwealth Act No. 444). Such employer may not therefore be heard to plead his own neglect as exemption or defense. The employee, in rendering extra service at the request of his employer has a right to assume that the latter has complied with the requirements of the law, and therefore has obtained the required permission from the Department of Labor.

The fourth ground invoked by the petitioner is based on the alleged pendency before the Court of Industrial Relations of another case No. 31-V between the Gotamco Lumber Company and the C. L. O. concerning the demands of the same laborers involved in this *expediente*. It appearing that said case No. 31-V had been stopped or withdrawn as of June 11, 1948, and that the decision of this case was rendered on July 9, 1948, we fail to see any prejudicial error.

Wherefore, the appealed decision is affirmed, with costs. So ordered.

Moran, C. J., Ozaeta, Parás, Pablo, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Judgment affirmed.

[No. L-2700. January 13, 1950]

THE PEOPLE OF THE PHILIPPINES, petitioner, *vs.* MANUEL BLANCO, Judge of First Instance of Iloilo, respondent

1. COURTS; JURISDICTION; MUNICIPAL COURT OF CITY OF ILOILO; THEFT CASES WITH HABITUAL DELINQUENCY PENALTY.—The Municipal Court of the City of Iloilo has jurisdiction over theft cases where the amount stolen does not exceed ₱200, notwithstanding the fact that by reason of habitual delinquency, an additional penalty of more than six months' imprisonment is imposed.
2. CRIMINAL LAW; HABITUAL DELINQUENCY, NATURE OF.—Habitual delinquency is not a crime in itself, but merely a factor in determining a total penalty.

ORIGINAL ACTION in the Supreme Court. Certiorari and Mandamus.

The facts are stated in the opinion of the court.

City Fiscal of Iloilo Filemon R. Consolacion for petitioner.
Respondent Judge Manuel Blanco in his own behalf.

BENZON, J.:

In the municipal court of Iloilo, on September 28, 1948, the fiscal of said city filed against Claudio Galicto and Roberto Sevilla an information charging them with the crime of theft of two trousers valued at ₱28. The information alleged that the accused were habitual delinquents, they having been convicted of theft on three previous occasions, enumerating such convictions in detail. The next day, Claudio Galicto pleaded guilty. The municipal judge, believing he had no jurisdiction, immediately forwarded the case to the Court of First Instance for further proceedings.

In the latter court, however, the city fiscal submitted on September 30, 1948 a motion for the return of the case to the municipal court, contending that it was said municipal court that had jurisdiction to decide it. The Court of First Instance, presided by the respondent judge, denied the motion, as well as a motion to reconsider. Hence this petition for certiorari and mandamus.

The charter of the City of Iloilo provides that its municipal court shall have concurrent jurisdiction with the Court of First Instance "over cases for larceny, embezzlement and estafa where the amount of money or property stolen or embezzled does not exceed two hundred pesos * * *." Inasmuch as the information described a theft of property worth ₱28.00 only, the municipal court had jurisdiction. It does not matter that the penalty to be imposed by reason of the habitual delinquency might reach six years' imprisonment, according to the respondent; because, unlike ordinary justice of the peace courts, the jurisdiction of the municipal court of Iloilo, like that of Manila, in the matter of theft or estafa, does not depend upon the extent of the

penalty, but upon the value of the property stolen or embezzled. (*People vs. San Juan*, 40 Off. Gaz. [Supp., 10, p. 48].)

It has been held that such municipal courts of Iloilo and Manila, have jurisdiction over theft cases where the amount stolen does not exceed ₱200, notwithstanding the fact that by reason of habitual delinquency, an additional penalty of more than six months' imprisonment is imposed.¹

It is contended for the respondent that the accused had not been booked for larceny only, but also for the "delito de habito" (habitual delinquency) which has not been assigned by law to the municipal court. This Court has already said that habitual delinquency is not a crime in itself, but merely a factor in determining a total penalty.² Article 62 of the Revised Penal Code, speaking of habitual delinquency, did not establish a new crime, but only regulated the "effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency" as its caption indicates. As a matter of fact it is found in a section prescribing rules for the application of penalties—not a section defining offenses.

It is furthermore suggested that, inasmuch as the Court of First Instance of Iloilo has concurrent jurisdiction and the papers are already there, the matter should be left therein in the interest of speedy adjudication. Such suggestion should not be heeded, because of the rule that "where several courts have concurrent jurisdiction of the same offense the court which first acquires jurisdiction of the prosecution retains it to the exclusion of the others" (22 C. J. S., p. 186). And supposing we agree to the suggestion, the accused himself, if he happens to object to the penalty imposed upon him by the Court of First Instance, might raise the question of jurisdiction.

It is thus clear that the petitioner is entitled to the remedy prayed for. Wherefore, the respondent should be, and is, prohibited from taking cognizance of the case, which must be returned to the municipal court of Iloilo for further proceedings. So ordered.

Moran, C. J., Ozaeta, Parás, Pablo, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Petition granted.

¹ *People vs. Acha*, G. R. No. 46714, October 2, 1939; *People vs. Del Mundo*, G. R. No. 46531; *People vs. San Juan*, *supra*; *Moran*, Comments on the Rules of Court, Vol. II, p. 885.

² *People vs. Sanchez*, 57 Phil., 770.

[No. L-3033. January 13, 1950]

PHILIPPINE MANUFACTURING CO., petitioner, *vs.* NATIONAL LABOR UNION and THE COURT OF INDUSTRIAL RELATIONS, respondents.

EMPLOYERS AND EMPLOYEES; DISMISSAL OF EMPLOYEE FOR INEFFICIENCY WHEN NOT JUSTIFIED.—Under the facts proved in this case the employer has not denied that for some time prior to the employee's dismissal from the service the latter's wage had been increased from ₱4.75 to ₱5. Ordinarily, a raise of salary or wage denotes recognition of the efficiency or quality of the work rendered by the recipient of such increase. The fact that the employee has received such increase prior to his dismissal for alleged inefficiency, weakens the stand taken herein by the employer.

PETITION to review on certiorari a decision of the court of Industrial Relations.

The facts are stated in the opinion of the court.

Ross, Selph, Carrascoso & Janda for petitioner.

Eulogio R. Lerum for respondent National Labor Union.

Emilio Lopez for respondent Court of Industrial Relations.

TORRES, J.:

This is a petition filed by the Philippine Manufacturing Company which prays that this Court issue a writ of certiorari to the Court of Industrial Relations ordering the latter (a) to forward and certify to this Court case 119-V(1) of said court, entitled National Labor Union *vs.* Philippine Manufacturing Company, so that the order of said court of February 9, 1949, may be reviewed by us; and (b) that the orders of the Court of Industrial Relations of February 9, 1949 and June 17, 1949, be vacated and set aside.

It appears that in said case No. 119-V(1) on February 11, 1948, the National Labor Union petitioned the Court of Industrial Relations that Emilio Padua, a member of the union employed by the Philippine Manufacturing Company up to February 6, 1948, was dismissed from his employment by the respondent without any justifiable cause; that his dismissal was due to his union activities. The Court of Industrial Relations, after hearing, in an order issued on February 9, 1949, declared that the dismissal of Emilio Padua was without any justifiable cause and consequently ordered his reinstatement "to his former position in the respondent company, with pay, from February 6, 1948 up to the date of his reinstatement."

According to the findings of the Court of Industrial Relations, Emilio Padua had been in the service of the Philippine Manufacturing Company as early as 1937 and

after liberation re-entered the service of said firm in February, 1947. From that date on he was receiving a daily wage of ₱4.75, but sometimes prior to his dismissal said wage was increased by ₱.25 a day, so that on February 6, 1948 he was being paid at the rate of ₱5 a day. Padua was assigned to the Purico Department of the respondent. His work consisted of pasting, nailing and binding or strapping the wooden boxes with wires. He was alone in that work, but one day foreman Eusebio Dollar saw him with much work and the boxes piling up, and Dollar became angry. It further appears that Padua accompanied the representative of the Court of Industrial Relations during an ocular inspection made by said official in the respondent company's premises in March, 1948. Padua testified that he told Catherine Carmichael, the supervisor of the work of piling boxes in the conveyor, that he needed help in his work. Carmichael told him to see Roberto Galang, the general foreman in the department, but in view of the failure of Galang to give Padua the needed helper, Dollar, foreman in the Margarine Department, became mad and reported him to Mason for not following his order. The next day, February 6, 1948, Padua was dismissed. Padua further said that he was expected to do the work that should have been accomplished by two men; that he was one of the organizers of the National Labor Union in the respondent company; that Dollar saw him proselyting among the laborers of the company to become members of the National Labor Union.

On the other hand, the evidence submitted by officials and employees of the respondent company emphasize on the alleged inefficiency of Padua, for, according to Dollar, on February 5, 1948 Padua had finished only seven boxes and when his attention was called to that fact Padua told Dollar to go away, that it was none of his business, that Galang was his foreman. Dollar reported the matter to Mason and suggested that Padua be transferred to the Construction Department, that Mason investigated the matter and subsequently dismissed Padua from the service of the company. On cross examination Padua admitted, however, that it was Benitez who was supposed to give orders to him and Galang had promised to give Padua a helper if there was one available.

With reference to the charge of insubordination, witness Drue of the respondent company said that Padua disobeyed his order not to smoke on the folding stand, to get away from the conveyor and to help paste the boxes. It was also said that Padua was found talking with the girls while doing his work, and notwithstanding several warnings given him he left his work without first notifying his foreman. In fact, according to Drue, Padua was warned on two occasions by Mason that unless he did his

work properly he would be dismissed, and notwithstanding those warnings, Padua never improved in his work.

In this connection witness Mason further stated that if Eusebio Dollar considered Padua inefficient in his work in his particular assignment, he would neither be acceptable in any other department of the company, for which reason Padua was dismissed.

On rebuttal, Padua denied the charge of inefficiency made against him by the members of the staff of the respondent company.

It appears, therefore, that while the representatives of the respondent company, the petitioners in this case, contend that Emilio Padua was dismissed for justifiable cause, because of his inefficiency and alleged insubordination, Padua alleges that he was dismissed for his union activities among the laborers working for the petitioning company. While the three witnesses who took the stand for the Philippine Manufacturing Company corroborated each other in their statements, Padua presented his case single-handed before the Court of Industrial Relations.

It is worthy of note that the company has not denied the fact that for some time prior to his dismissal from the service of the Philippine Manufacturing Company the wage of Padua had been increased from ₱4.75 to ₱5 a day. Ordinarily a raise of salary or wage denotes recognition of the efficiency or quality of the work rendered by the recipient of such increase. The fact that Emilio Padua has received such increase prior to his dismissal for alleged inefficiency, weakens, in our opinion, the stand taken herein by the respondent company. Furthermore, since we do not find any reason to disturb the findings of the Court of Industrial Relations in the premises, we are inclined to affirm, as we do hereby affirm, the order under consideration.

The petition is denied, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Petition denied.

[No. L-858. Enero 18, 1950]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
GREGORIO HONTAÑOSAS, acusado y apelante

DERECHO PENAL; TRAICIÓN; CAPTURA Y SUPRESIÓN DE LA GUERRILLA.—

Hay un hecho que se destaca constantemente en este asunto y es que el acusado iba siempre armado con revólver. Sabiendo que él, como ciudadano filipino, debía lealtad al Gobierno de su país, ayudó, sin embargo, al ejército japonés en la captura y supresión de la guerrilla, que era parte integrante y necesaria

en la guerra de resistencia, con infracción del artículo 114 del Código Penal Revisado. Coger a las guerrillas era ayudar al enemigo.

APELACIÓN contra una sentencia del Tribunal del Pueblo

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Agapito Y. Hontañosas en representación del apelante.

El Primer Procurador General Auxiliar Sr. Roberto A. Gianzon y el Procurador Sr. Inocencio Rosal en representación del Gobierno.

PABLO, M.:

El acusado apela contra una decisión del Tribunal del Pueblo que le condenó a reclusión perpetua con las accesorias, pagar una multa de ₱15,000 y las costas.

De las pruebas obrantes en autos encontramos que el acusado, desde el 1.º de septiembre de 1942 ha desempeñado el cargo de guardia provincial, y después de un año el de agente especial de su hermano Agapito Hontañosas, nombrado gobernador provincial por el ejército japonés, sin interrupción alguna, hasta que el gobernador hacia los últimos días de octubre de 1944, fué capturado por las guerrillas. Como agente especial, el acusado estuvo haciendo campaña por la captura de las guerrillas.

En la tarde del 20 de julio de 1944 en el barrio Songculan, Dawis, Bohol, el acusado fué a la casa de Plácido Loquias, y porque éste no podía dar cuenta del paradero de su hermano Julián, que era un guerrillero, le abofeteó y, no contento con esto, le pegó en el hombro con un revólver. Mientras esto tenía lugar, Fausto Loquias llegó, e inmediatamente el acusado le dió un puñetazo. Por tal inesperado ataque, Fausto vaciló y, para no caer al suelo, se apoyó en el tabique de la casa; el acusado amenazó a los dos hermanos Plácido y Fausto con quemar su casa o matarles si hasta las doce de aquella noche no se presentaba Julián. Testificaron sobre este hecho Plácido Loquias y Fausto Loquias.

A eso de las siete de la noche del 20 de julio de 1944, el acusado, con Francisco Rara, fué a la casa de Juan de la Peña en el barrio de Songculan, Dawis, Bohol, ordenando que nadie se moviera y preguntando por el paradero de su hijo Segundino de la Peña que era miembro de la guerrilla; como Juan dijera que desde que salió Segundino ya no había vuelto averle, le abofeteó cinco veces y después le ordenó que dijera a su hijo que se rindiese, y como contestara que no podía hacerlo porque no estaba en casa, el acusado con la culata del revólver le pegó en la cabeza, por lo que cayó al suelo; cuando recobró el sentido el acusado exclamó: "Todavía vive, le llevaré a Tagbilaran y allí le mataré"; le llevó a los bajos de la casa

y después le pegó con un pedazo de madera, y al caer al suelo, le arrastró hasta una plantación de casava, diciéndole que le esperase; después de investigar a los que estaban en la casa, volvió a la plantación para preguntar otra vez por Segundino, y como Juan dijera que no podía hacer nada porque Segundino estaba ausente, le pegó otra vez; cuando se levantó ayudado por Francisco Rara, el compañero del acusado, éste le dijo que si hasta el viernes siguiente no entregaba a su hijo, el Kempei Tai mataría a todos los miembros de su familia. Por dichos maltratos, Juan de la Peña estuvo en cama por dos semanas. Testificaron Juan de la Peña y su esposa Guadalupe Romanos.

En la noche del 20 de julio de 1944, el acusado fué a la casa de Cándido Somaylo, en el barrio de Songculan, Dawis, Bohol, acompañado por Francisco Rara, preguntando por el paradero de su hermano Hilario Somaylo, otro guerrillero, y como no diera contestación satisfactoria, el acusado le abofeteó y le amenazó con matarle si no presentaba a su hermano Hilario; cuando su esposa quiso intervenir, el acusado le apuntó con el revólver ordenándole que se callara; el acusado llevó a Cándido a la plantación de casava a donde después volvió arrastrando a Juan de la Peña. El acusado dijo a Juan y Cándido que les llevaría a Tagbilaran para ser entregados al Kempei Tai; pero después de andar unos cien metros, el acusado les ordenó que le entregasen a Segundino e Hilario; en caso contrario, serían muertos. De estos hechos declararon Cándido Somaylo, su esposa Emilia López y Faustino López. Emilia López, que es pariente del acusado, no había de declarar en falso para perjudicarlo.

En un domingo del mes de junio de 1944, mientras Narcisa Estoque estaba vendiendo golosinas en la gallería del barrio Songculan, Dawis, Bohol, el acusado le quitó un portamonedas que contenía billetes de moneda japonesa y tres billetes de emergencia de a diez pesos cada uno, expedidos por autorización del Presidente Quezon. El acusado devolvió a Narcisa Estoque las monedas expedidas por el ejército japonés y demostró al público los billetes de emergencia diciendo que eran un contrabando y que su uso estaba prohibido, y públicamente los rompió. El acusado amenazó con entregarla al Kempei Tai para ser castigada si otra vez usaba aquella clase de monedas. Son testigos Narcisa Estoque y Paulina Romanos.

En todas estas ocasiones el acusado iba siempre armado con revólver. Sabiendo que él, como ciudadano filipino, debía lealtad al Gobierno de su país, ayudó, sin embargo, al ejército japonés en la captura y supresión de la guerrilla, que era parte integrante y necesaria en la guerra de resistencia, con infracción del artículo 114 del Código Penal Revisado. Coger a las guerrillas era ayudar al enemigo.

El acusado, como defensa, declaró que había recibido informes de que Francisco Rara y Juan de la Peña habían tenido disgustos con motivo de un juego de *hantak*; que para ponerles en paz el acusado invitó a Francisco a la casa de Juan, pero al ver a Francisco, Juan se avalanzó contra éste; entonces el acusado empujó a Juan que por eso cayó al suelo. Francisco corrió escaleras abajo. El acusado invitó a Francisco a que fuesen juntos abajo, y Juan inmediatamente sacó un palo para pegar a Francisco; para impedir la agresión, el acusado arrebató el palo, y en la lucha por la posesión del palo, Juan cayó al suelo. Al levantarse Juan, el acusado le aconsejó que debía hacer paces con Francisco, porque éste vivía al lado del Kempei Tai y podría revelar a los japoneses que él tenía un hijo guerrillero, y los japoneses podrían matarle. Por esta feliz intervención del acusado, Juan y Francisco se dieron la mano e hicieron las paces. Aseguró el acusado que no abofeteó ni pegó con revólver a Juan; que éste estaba arrestado por la guerrillas y para salvarse inventó esta acusación contra él, y le pidió perdón.

El acusado admitió que había ido a la casa de Fausto Loquias para advertirle que fuese con mucho cuidado porque había muchos japoneses que hacían patrulla cerca de su casa y podrían descubrir que su hermano Julián era guerrillero, y si no conseguían coger a su hermano, podrían cogerle a él; que no había maltratado a Plácido Loquias; que cuando volvió de Cebú ya después de la liberación, fué a preguntarle por qué le había denunciado a los miembros del CIC, y Plácido le pidió perdón diciendo que para salvar a su hermano Julián que estaba detenido por los guerrilleros él había fabricado esta acusación contra él.

También admitió que él había ido a la casa de Cándido Somaylo, pero no era verdad que le hubiese abofeteado y maltratado; que si le acusó fue porque antes de la guerra le había pedido Cándido algunos cocos y no se los dió, y por eso Cándido le pidió perdón por la acusación fabricada.

Si es verdad que Juan de la Peña, Fausto Loquias y Cándido Somaylo habían confesado al acusado que habían fabricado su correspondiente acusación para salvarse de un aprieto, es extraño que no lo haya suscitado su abogado en las repreguntas. De ello se puede deducir que la defensa de "acusación fabricada" es invención de última hora: un cuento tártaro.

El acusado declaró que se enteró de que los constabularios irían a la gallera para confiscar los billetes de emergencia en circulación; que él fué al lugar inmediatamente, y al ver Juanita Nistal, ésta le entregó los billetes que tenía en su poder para no ser arrestada por los constabularios; que el acusado, después de volver de Cebú, fué a verse con Juanita para preguntar por qué ella había formulado acusación contra él y ella le pidió perdón diciendo que había inventado la acusación para ser puesta en libertad

por los guerrilleros. Es de advertir que las testigos de la acusación son Narcisa Estoque y Paulina Romanos. Juanita Nistal no declaró como testigo. En nada desvirtúa, por tanto, la declaración del acusado.

Después de considerar detenidamente las pruebas de ambas partes, opinamos que el Tribunal *a quo* no erró al no dar crédito a las pruebas de la defensa.

Teniendo en cuenta el alcance de la ayuda prestada por el acusado al ejército de ocupación, debe reducirse la pena a 12 años y un día de reclusión temporal, confirmando la sentencia en todo lo demás.

Díctese sentencia a tenor de lo resuelto.

Moran, Pres., Ozaeta, Parás, Bengzon, Padilla, Tuason, Montemayor, Reyes, y Torres, MM., están conformes.

Se modifica la sentencia.

[No. L-1477. January 18, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. JULIO GUILLEN, defendant and appellant

1. CRIMINAL LAW; MEDICAL JURISPRUDENCE; INSANITY AS A DEFENSE.—The accused, a man of strong will and convictions, is not insane but suffers from a personality defect called Constitutional Psychopathic Inferiority, characterized by a weakness of censorship specially in relation to rationalization about the consequences of his acts.
2. CRIMINAL LAW; COMPLEX CRIME OF MURDER AND MULTIPLE ATTEMPTED MURDER; OFFENDED PARTIES OTHER THAN INTENDED VICTIM; ACT WITH INTENTION TO KILL; CRIMINAL LIABILITY.—In throwing a hand grenade at the President with the intention of killing him, the appellant acted with malice. He is therefore liable for all the consequences of his wrongful act; for in accordance with article 4 of the Revised Penal Code, criminal liability is incurred by any person committing a felony (delito) although the wrongful act done be different from that which he intended to do.
3. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCE OF TREACHERY PROPERLY CONSIDERED.—The qualifying circumstance of treachery may properly be considered, even when the victim of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up a defense against the attack, or became aware of it.
4. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCE OF PREMEDITATION MAY NOT PROPERLY BE TAKEN INTO ACCOUNT.—The qualifying circumstance of premeditation may not properly be taken into account when the victim of the attack was not the one whom the defendant intended to kill.
5. ID.; ID.; AGGRAVATING CIRCUMSTANCES NEED NOT BE CONSIDERED.—In meting out the penalty for the complex crime of murder and multiple attempted murder, aggravating circumstances need not be considered in view of article 48 of the Revised Penal Code, which provides that the prescribed penalty shall be imposed in its maximum period.
6. ID.; ID.; DEATH PENALTY, DUTY OF THE COURT TO APPLY.—Under the facts and circumstances proved in this case, it is the

painful duty of the court to apply the law and mete out to the accused the extreme penalty of death provided by article 248 of the Revised Penal Code.

7. ID.; CRIMINAL NEGLIGENCE, WHAT CONSTITUTES.—In criminal negligence, the injury caused to another should be unintentional, it being simply the incident of another act performed without malice.

APPEAL from a judgment of the Court of First Instance of Manila. Ocampo, J.

The facts are stated in the opinion of the court.

Mariano A. Albert for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Francisco A. Carreon* for appellee.

PER CURIAM:

This case is before us for review of, and by virtue of appeal from, the judgment rendered by the Court of First Instance of Manila in case No. 2764, whereby Julio Guillen y Corpus, or Julio C. Guillen, is found guilty beyond reasonable doubt of the crime of murder and multiple frustrated murder, as charged in the information, and is sentenced to the penalty of death, to indemnify the heirs of the deceased Simeon Varela (or Barrela) in the sum of ₱2,000 and to pay the costs.

Upon arraignment the accused entered a plea of not guilty to the charges contained in the information.

Then the case was tried in one of the branches of the Court of First Instance of Manila presided over by the Honorable Buenaventura Ocampo who, after the submission of the evidence of the prosecution and the defense, rendered judgment as above stated.

In this connection it should be stated that, at the beginning of the trial and before arraignment, counsel *de oficio* for the accused moved that the mental condition of Guillen be examined. The court, notwithstanding that it had found out from the answers of the accused to questions propounded to him in order to test the soundness of his mind, that he was not suffering from any mental derangement, ordered that Julio Guillen be confined for a period of about 8 days in the government Psychopathic Hospital, there to be examined by medical experts who should report their findings accordingly. This was done, and, according to the report of the board of medical experts, presided over by Dr. Fernandez of the National Psychopathic Hospital, Julio Guillen was not insane. Said report (Exhibit L), under the heading "Formulation and Diagnosis," at pages 13 and 14, reads:

"FORMULATION AND DIAGNOSIS

"Julio C. Guillen was placed under constant observation since admission. There was not a single moment during his whole 24 hours daily, that he was not under observation.

"The motive behind the commission of the crime is stated above. The veracity of this motivation was determined in the Narco-

synthesis. That the narco-synthesis was successful was checked up the day after the test. The narco-synthesis proved not only that Julio C. Guillen was telling us the truth, but also did not reveal any conflict or complex that may explain a delusional or hallucinatory motive behind the act.

"Our observation and examination failed to elicit any sign or symptom of insanity in Mr. Julio C. Guillen. He was found to be intelligent, always able to differentiate right from wrong, fully aware of the nature of the crime he committed and is equally decided to suffer for it in any manner or form.

"His version of the circumstances of the crime, his conduct and conversation relative thereto, the motives, temptations and provocations that preceded the act, were all those of an individual with a sound mind.

"On the other hand he is a man of strong will and conviction and once arriving at a decision he executes, irrespective of consequences and as in this case, the commission of the act at Plaza Miranda.

"What is of some interest in the personality of Julio C. Guillen is his commission of some overt acts. This is seen not only in the present instance, but sometime when an employee in La Clementina Cigar Factory he engaged in a boxing bout Mr. Monzano, a Spaniard, one of the managers of the factory because Mr. Monzano wanted to abuse the women cigar makers, and felt it his duty to defend them. One time he ran after a policeman with a knife in hand after being provoked to a fight several times. He even challenged Congressman Nueno to a fight sometime before when Mr. Nueno was running for a seat in the Municipal Board of the City of Manila, after hearing him deliver one of his apparently outspoken speeches.

"All these mean a defect in his personality characterized by a weakness of censorship especially in relation to rationalization about the consequences of his acts.

"In view of the above findings it is our considered opinion that Julio C. Guillen is not insane but is an individual with a personality defect which in Psychiatry is termed, Constitutional Psychopathic Inferiority.

"Final Diagnosis

"Not insane: Constitutional Psychopathic Inferiority, without psychosis."

In view of the above-quoted findings of the medical board, and notwithstanding the contrary opinion of one Dr. Alvarez, who was asked by the defense to give his opinion on the matter, the court ruled that Guillen, not being insane, could be tried, as he was tried, for the offenses he committed on the date in question.

THE FACTS

Upon careful perusal of the evidence and the briefs submitted by counsel for the accused, the Solicitor General and their respective memoranda, we find that there is no disagreement between the prosecution and the defense, as to the essential facts which caused the filing of the present criminal case against this accused. Those facts may be stated as follows:

On the dates mentioned in this decision, Julio Guillen y Corpus, although not affiliated with any particular political group, had voted for the defeated candidate in the presidential elections held in 1946. Manuel A. Roxas, the

successful candidate, assumed the office of President of the Commonwealth and subsequently President of the Philippine Republic. According to Guillen, he became disappointed in President Roxas for his alleged failure to redeem the pledges and fulfill the promises made by him during the presidential election campaign; and his disappointment was aggravated when, according to him, President Roxas, instead of looking after the interest of his country, sponsored and campaigned for the approval of the so-called "parity" measure. Hence he determined to assassinate the President.

After he had pondered for some time over the ways and means of assassinating President Roxas, the opportunity presented itself on the night of March 10, 1947, when at a popular meeting held by the Liberal Party at Plaza de Miranda, Quiapo, Manila, attended by a big crowd, President Roxas, accompanied by his wife and daughter and surrounded by a number of ladies and gentlemen prominent in government and politics, stood on a platform erected for that purpose and delivered his speech expounding and trying to convince his thousands of listeners of the advantages to be gained by the Philippines, should the constitutional amendment granting American citizens the same rights granted to Filipino nationals be adopted.

Guillen had first intended to use a revolver for the accomplishment of his purpose, but having lost said firearm, which was duly licensed, he thought of two hand grenades which were given him by an American soldier in the early days of the liberation of Manila in exchange for two bottles of whisky. He had likewise been weighing the chances of killing President Roxas, either by going to Malacañan, or following his intended victim in the latter's trips to the provinces, for instance, to Tayabas (now Quezon) where the President was scheduled to speak, but having encountered many difficulties, he decided to carry out his plan at the pro-parity meeting held at Plaza de Miranda on the night of March 10, 1947.

On the morning of that date he went to the house of Amado Hernandez whom he requested to prepare for him a document (Exhibit B), in accordance with their previous understanding in the preceding afternoon, when they met at the premises of the Manila Jockey Club on the occasion of an "anti-parity" meeting held there. On account of its materiality in this case, we deem it proper to quote hereunder the contents of said document. An English translation (Exhibit B-2) from its original in Tagalog reads:

"FOR THE SAKE OF A FREE PHILIPPINES"

"I am the only one responsible for what happened. I conceived it, I planned it, and I carried it out all by myself alone. It took me many days and nights pondering over this act, talking to my

own conscience, to my God, until I reached my conclusion. It was my duty.

"I did not expect to live long; I only had one life to spare. And had I expected to live much longer, had I had several lives to spare, I would not have hesitated either to sacrifice it for the sake of a principle which was the welfare of the people.

"Thousands have died in Bataan; many more have mourned the loss of their husbands, of their sons, and there are millions now suffering. Their deeds bore no fruits; their hopes were frustrated.

"I was told by my conscience and by my God that there was a man to be blamed for all this: he had deceived the people, he had astounded them with too many promises with no other purpose than to entice them; he even went to the extent of risking the heritage of our future generations. For these reasons he should not continue any longer. His life would mean nothing as compared with the welfare of eighteen million souls. And why should I not give up my life too if only for the good of those eighteen million souls.

"These are the reasons which impelled me to do what I did and I am willing to bear up the consequences of my act. It matters not if others will curse me. Time and history will show, I am sure, that I have only displayed a high degree of patriotism in the performance of my said act.

"Hurrah for a free Philippines.

"Cheers for the happiness of every Filipino home.

"May God pity on me.

"Amen.

"JULIO C. GUILLÉN"

A copy (Exhibit B-1) of the original in Tagalog (Exhibit B), made at the request of Guillen by his nephew, was handed to him only at about 6 o'clock in the afternoon of March 10, 1947, for which reason said Exhibit B-1 appears unsigned, because he was in a hurry for that meeting at Plaza de Miranda.

When he reached Plaza de Miranda, Guillen was carrying two hand grenades concealed in a paper bag which also contained peanuts. He buried one of the hand grenades (Exhibit D), in a plant pot located close to the platform, and when he decided to carry out his evil purpose he stood on the chair on which he had been sitting and, from a distance of about seven meters, he hurled the grenade at the President when the latter had just closed his speech, was being congratulated by Ambassador Romulo and was about to leave the platform.

General Castañeda, who was on the platform, saw the smoking, hissing, grenade and, without losing his presence of mind, kicked it away from the platform, along the stairway, and towards an open space where the general thought the grenade was likely to do the least harm; and, covering the President with his body, shouted to the crowd that everybody should lie down. The grenade fell to the ground and exploded in the middle of a group of persons who were standing close to the platform. Confusion ensued, and the crowd dispersed in a panic. It was found that the fragments of the grenade

had seriously injured Simeon Varela (or Barrela)—who died on the following day as a result of mortal wounds caused by the fragments of the grenade (Exhibits F and F-1)—Alfredo Eva, Jose Fabio, Pedro Carrillo and Emilio Maglalang.

Guillen was arrested by members of the Police Department about two hours after the occurrence. It appears that one Angel Garcia, who was one of the spectators at that meeting, saw how a person who was standing next to him hurled an object at the platform and, after the explosion, ran away towards a barber shop located near the platform at Plaza de Miranda. Suspecting that that person was the thrower of the object that exploded, Garcia went after him and had almost succeeded in holding him; but Guillen offered stiff resistance, got loose from Garcia and managed to escape. Garcia pursued him, but some detectives, mistaking the former for the real criminal and the author of the explosion, placed him under arrest. In the meantime, while the City Mayor and some agents of the Manila Police Department were investigating the affair, one Manuel Robles volunteered the information that the person with whom Angel Garcia was wrestling was Julio Guillen; that he (Manuel Robles) was acquainted with Julio Guillen for the previous ten years and had seen each other in the plaza a few moments previous to the explosion.

The police operatives interrogated Garcia and Robles, and Julio Guillen was, within two hours after the occurrence, found in his home at 1724 Juan Luna Street, Manila, brought to the police headquarters and identified by Angel Garcia, as the same person who hurled towards the platform the object which exploded and whom Garcia tried to hold when he was running away.

During the investigation conducted by the police he readily admitted his responsibility, although at the same time he tried to justify his action in throwing the bomb at President Roxas. He also indicated to his captors the place where he had hidden his so-called last will quoted above and marked Exhibit B, which was then unsigned by him and subsequently signed at the police headquarters.

Re-enacting the crime (Exhibit C), he pointed out to the police where he had buried (Exhibit C-1) the other hand grenade (Exhibit D), and, in the presence of witnesses he signed a statement which contained his answers to questions propounded to him by Major A. Quintos of the Manila Police, who investigated him soon after his arrest (Exhibit E). From a perusal of his voluntary statement, we are satisfied that it tallies exactly with the declarations made by him on the witness stand during the trial of this case.

THE ISSUES

In the brief submitted by counsel *de officio* for this appellant, several errors are assigned allegedly committed by the trial court, namely: *first*, "in finding the appellant guilty of murder for the death of Simeon Varela"; *second*, "in declaring the appellant guilty of the complex crime of murder and multiple frustrated murder"; *third*, "in applying sub-section 1 of article 49 of the Revised Penal Code in determining the penalty to be imposed upon the accused"; and *fourth*, "in considering the concurrence of the aggravating circumstances of nocturnity and of contempt of public authorities in the commission of the crime."

The evidence for the prosecution, supported by the brazen statements made by the accused, shows beyond any shadow of doubt that, when Guillen attended that meeting, carrying with him two hand grenades, to put into execution his preconceived plan to assassinate President Roxas, he knew fully well that, by throwing one of those two hand grenades in his possession at President Roxas, and causing it to explode, he could not prevent the persons who were around his main and intended victim from being killed or at least injured, due to the highly explosive nature of the bomb employed by him to carry out his evil purpose.

Guillen, testifying in his own behalf, in answer to questions propounded by the trial judge (page 96 of transcript) supports our conclusion. He stated that he performed the act voluntarily; that his purpose was to kill the President, but that it did not make any difference to him if there were some people around the President when he hurled that bomb, because the killing of those who surrounded the President was tantamount to killing the President, in view of the fact that those persons, being loyal to the President, were identified with the latter. In other words, although it was not his main intention to kill the persons surrounding the President, he felt no compunction in killing them also in order to attain his main purpose of killing the President.

The facts do not support the contention of counsel for appellant that the latter is guilty only of homicide through reckless imprudence in regard to the death of Simeon Varela and of less serious physical injuries in regard to Alfredo Eva, Jose Fabio, Pedro Carrillo and Emilio Maglalang, and that he should be sentenced the corresponding penalties for the different felonies committed, the sum total of which shall not exceed three times the penalty to be imposed for the most serious crime in accordance with article 70 in relation to article 74 of the Revised Penal Code.

In throwing hand grenade at the President with the intention of killing him, the appellant acted with malice.

He is therefore liable for all the consequences of his wrongful act; for in accordance with article 4 of the Revised Penal Code, criminal liability is incurred by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended. In criminal negligence, the injury caused to another should be unintentional, it being simply the incident of another act performed without malice. (*People vs. Sara*, 55 Phil., 939.) In the words of Viada, "in order that an act may be qualified as imprudence it is necessary that neither malice nor intention to cause injury should intervene; where such intention exists, the act should be qualified by the felony it has produced even though it may not have been the intention of the actor to cause an evil of such gravity as that produced." (Viada's Comments on the Penal Code, vol. 7, 5th ed., p. 7.) And, as was held by this court, a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence. (*People vs. Nanquil*, 43 Phil., 232.) Where such unlawful act is wilfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence. (*People vs. Gona*, 54 Phil., 605.)

The case of *People vs. Nabug-at*, 51 Phil., 967, cited by counsel for appellant does not support his contention. In that case the defendant, with intent to kill his sweetheart, fired a shot from his revolver which hit not the intended victim but the latter's niece, who was seriously wounded. The defendant in that case contended that he was guilty only of unlawful discharge of firearms with injuries, but this court held that the act having been committed with intent to kill and with treachery, defendant was guilty of frustrated murder.

Squarely on the point raised by counsel is the following decision of the Supreme Court of Spain:

"*Cuestión 62.* Se presenta A, a las ocho de la noche, en el estanco de B a comprar tabaco, y habiéndose negado éste a dárselo al fiado, se retira aquél sin mediar entre ambos disputa alguna; pero, transcurrido un cuarto de hora, hallándose el estancuero despachando a C, se oye la detonación de un arma de fuego disparada por A desde la calle, quedando muertos en el acto C y el estancuero: supuesta la no intención en A de matar a C, y sí sólo al estancuero, cabe calificar la muerte de este de homicidio y la de C de imprudencia temeraria?—La Sala de lo criminal de la Audiencia de Granada lo estimó así, y condenó al procesado a catorce años de reclusión por el homicidio y a un año de prisión correccional por la imprudencia. Aparte de que la muerte del estancuero debió calificarse de asesinato y no de homicidio, por haberse ejecutado con alevosía, es evidente que la muerte de C, suponiendo que no se propusiera ejecutarla el procesado, no pudo calificarse de imprudencia temeraria, sino que también debió declarársele responsable de la misma, a tenor de lo dispuesto en este apartado último del artículo; y que siendo ambas muertes producidas por un solo hecho, o sea por un solo disparo, debió imponerse al reo la pena del delito de asesinato en el grado máximo, a tenor de lo dispuesto en el art.

90 del Código, o sea la pena de muerte. Se ve, pues, claramente que en la antedicha sentencia, aparte de otros artículos del Código, se infringió por la Sala la disposición de este apartado último del artículo muy principalmente, y así lo declaró el Tribunal Supremo en S. de 18 de junio de 1872. (Gaceta de 1.º de agosto.)" (I Viada, 5th Ed., p. 42.)

Article 48 of the Revised Penal Code provides as follows:

"ART. 48. *Penalty for Complex Crimes.*—When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period."

We think it is the above-quoted article and not paragraph 1 of article 49 that is applicable. The case before us is clearly governed by the first clause of article 48 because by a single act, that of throwing a highly explosive hand grenade at President Roxas, the accused committed two grave felonies, namely: (1) murder, of which Simeon Varela was the victim; and (2) multiple attempted murder, of which President Roxas, Alfredo Eva, Jose Fabio, Pedro Carrillo and Emilio Maglalang were the injured parties.

The killing of Simeon Varela was attended by the qualifying circumstance of treachery. In the case of *People vs. Mabug-at, supra*, this court held that the qualifying circumstance of treachery may be properly considered, even when the victims of the attack was not the one whom the defendant intended to kill, if it appears from the evidence that neither of the two persons could in any manner put up defense against the attack, or become aware of it. In the same case it was held that the qualifying circumstance of premeditation may not be properly taken into account when the person whom the defendant proposed to kill was different from the one who became his victim.

There can be no question that the accused attempted to kill President Roxas by throwing a hand grenade at him with the intention to kill him, thereby commencing the commission of a felony by overt acts, but he did not succeed in assassinating him "by reason of some cause or accident other than his own spontaneous desistance." For the same reason we qualify the injuries caused on the four other persons already named as merely attempted and not frustrated murder.

In this connection, it should be stated that, although there is abundant proof that, in violation of the provisions of article 148 of the Revised Penal Code, the accused Guillen has committed among others the offense of assault upon a person in authority, for in fact his efforts were directed towards the execution of his main

purpose of eliminating President Roxas for his failure to redeem his electoral campaign promises, by throwing at him in his official capacity as the Chief Executive of the nation the hand grenade in question, yet, in view of the failure of the prosecution to insert in the information the appropriate allegation charging Guillen with the commission of said offense, we shall refrain from making a finding to that effect.

The complex crimes of murder and multiple attempted murder committed by the accused with the single act of throwing a hand grenade at the President, was attended by the various aggravating circumstances alleged in the information, without any mitigating circumstance. But we do not deem it necessary to consider said aggravating circumstances because in any event article 48 of the Revised Penal Code above-quoted requires that the penalty for the most serious of said crimes be applied in its maximum period. The penalty for murder is *reclusion* temporal in its maximum period to death. (Art. 248.) It is our painful duty to apply the law and mete out to the accused the extreme penalty provided by it upon the facts and circumstances hereinabove narrated.

The sentence of the trial court being correct, we have no alternative but to affirm it, and we hereby do so by a unanimous vote. The death sentence shall be executed in accordance with article 81 of the Revised Penal Code, under authority of the Director of Prisons, on such working day as the trial court may fix within 30 days from the date the record shall have been remanded. It is so ordered.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ.

MORAN C. J.:

Mr. Justice F. R. Feria voted for the affirmance of the judgment of the lower court, but, on account of his absence at the time of the promulgation of this opinion, his signature does not appear herein.

Judgment affirmed.

[No. L-2247. Enero 23, 1950]

En el asunto de la petición de naturalización de Florentino Uy Boco. FLORENTINO UY BOCO, recurrente y apelado, *contra* REPUBLICA DE FILIPINAS, opositora y apelante.

CIUDADANÍA; SOLICITANTES; EXENCIÓN DE PRESENTAR DECLARACIÓN; REQUISITOS; ARTÍCULO 6, LEY NO. 473 INTERPRETADA.—El Artículo 6, Ley No. 473 del Commonwealth tal como ha sido enmendada por la Ley No. 535 del Commonwealth es clara: no obliga la presentación de la declaración de propósito (a) a las personas nacidas en Filipinas y que hayan recibido instrucción

primaria y secundaria, y (b) a aquéllas que hayan residido en Filipinas por un período de 30 años o más. Y como el solicitante no ha recibido la instrucción primaria y secundaria (además de haber nacido en Filipinas), debe presentar su declaración de intención de hacerse ciudadano filipino a la Oficina de Justicia como cualquier otro solicitante. No está incluido entre los exceptuados. El texto inglés es más claro aún, pues dice textualmente: "Persons born in the Philippines and have received their primary and secondary education in public schools * * *." El que solamente ha estudiado hasta el segundo año de la escuela secundaria (high school) no ha recibido la instrucción secundaria; solamente ha estudiado la mitad de ella. Si el solicitante hubiera estudiado la primera y segunda enseñanza (y no parte solamente de la secundaria), podría presentar su solicitud sin necesidad de esta declaración de propósito de hacerse ciudadano filipino.

APELACIÓN contra una sentencia del juzgado de Primera Instancia de Cebú. Moscoso, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

El Procurador General, Sr. Felix Bautista Angelo y el Procurador Sr. Lucas Lacson en representación de la apelante.

Sres. Zosa, Coscolluela y Zosa en representación del apelado.

PABLO, M.:

Se trata de una apelación interpuesta por el Gobierno contra la sentencia dictada por el Juzgado de Primera Instancia de Cebú que decreta la naturalización del solicitante Florentino Uy Boco.

La apelante alega que el juzgado *a quo* cometió tres errores: (a) Al declarar que el solicitante está exento de la obligación de presentar declaración jurada de su intención de solicitar la ciudadanía filipina; (b) al no declarar que el solicitante no ha presentado pruebas de que puede escribir el bisaya; y (c) al dictar sentencia de naturalización.

El juzgado *a quo* concluyó que habiendo nacido el solicitante en Filipinas, está exento de la obligación de presentar declaración jurada de su intención de hacerse ciudadano filipino, y que la fraseología de la ley que requiere instrucción primaria y secundaria se refiere a los hijos del solicitante y no al solicitante mismo. Esta conclusión es contraria a las disposiciones de la Ley Revisada sobre Naturalización. Su artículo 5 dispone, como regla general, que el solicitante en una causa de naturalización debe presentar, un año antes de presentar su solicitud, a la Oficina de Justicia una declaración bajo juramento de su intención de hacerse ciudadano filipino. Esta obligación es para todos los solicitantes; pero, como excepción, su artículo 6 dispone:

"Personas exentas de la obligación de presentar declaración de propósito.—Los que han nacido en Filipinas y recibieron su educación primaria y secundaria en escuelas oficiales o reconocidas por el Go-

bierno, y los que estuvieron residiendo continuamente en Filipinas por espacio de treinta años o más antes de presentar su solicitud, podrán naturalizarse sin registrar una declaración de propósito, previo cumplimiento de los demás requisitos exigidos en esta Ley. A dichos requisitos se añadirá el de que el solicitante haya dado educación primaria y secundaria a todos sus hijos en las escuelas públicas o privadas reconocidas por el Gobierno que no sean exclusivas de una raza o nacionalidad." (Artículo 6, Ley No. 473 del Commonwealth, tal como ha sido enmendado por la ley No. 535 del Commonwealth.)

Esta disposición es clara: no obliga la presentación de la declaración de propósito (a) a las personas nacidas en Filipinas y que hayan recibido instrucción primaria y secundaria, y (b) a aquellas que hayan residido en Filipinas por un período de 30 años o más. Y como el solicitante no ha recibido la instrucción primaria y secundaria (además de haber nacido en Filipinas), debe presentar su declaración de intención de hacerse ciudadano filipino a la Oficina de Justicia como cualquier otro solicitante. No está incluido entre los exceptuados. El texto inglés es más claro aún, pues dice textualmente: "Persons born in the Philippines and have received their primary and secondary education in public schools * * *." El que solamente ha estudiado hasta el segundo año de la escuela secundaria (high school) no ha recibido la instrucción secundaria; solamente ha estudiado la mitad de ella. Si el solicitante hubiera estudiado la primera y segunda enseñanza (y no parte solamente de la secundaria), podría presentar su solicitud sin necesidad de esta declaración de propósito de hacerse ciudadano filipino.

Los abogados del solicitante en su alegato dicen que si se tuviese en cuenta estrictamente el sentido literal del artículo 6 de la ley, estarían conformes con la apelante. La interpretación, según ellos, debe ser liberal: se debe tener en cuenta la dislocación política, económica y social que han sufrido los países por la guerra mundial; que si no fuera por esta guerra, el solicitante hubiera terminado el curso de la segunda enseñanza.

Si por la guerra no se exigiese el cumplimiento de los términos concretos de la ley, daríamos un precedente peligroso: los estudiantes de derecho que han estudiado el segundo año reclamarían tener derecho a sujetarse a los exámenes del Tribunal Supremo y los estudiantes de medicina, de ingeniería etc., que han llegado al segundo año, reclamarían también tener derecho a sujetarse a los exámenes del Gobierno; los contratistas que han hecho a medias su obra, por la guerra, reclamarían también el pago de la obra completa. Y así, por el estilo, se sancionaría la relajación de las leyes, de las costumbres, de la moralidad, de todo.

Al llegar a esta conclusión ya es innecesario discutir el segundo error y queda resuelto el tercero.

Con revocación de la decisión apelada, se sobresee la solicitud, con costas.

Moran, Pres., Ozaeta, Parás, Bengzon, Padilla, Tuason, Montemayor, Reyes, y Torres, MM., están conformes.

Se revoca la sentencia; se sobresee la solicitud.

[No. L-2248, January 23, 1950]

In the matter of the petition of Vicente Rosal Pardo to be admitted a citizen of the Philippines. VICENTE ROSAL PARDO, petitioner and appellee, *vs.* THE REPUBLIC OF THE PHILIPPINES, oppositor and appellant.

1. CITIZENSHIP; APPLICANT'S ABILITY TO SPEAK AND WRITE PRINCIPAL FILIPINO DIALECTS; LENGTH OF RESIDENCE AND BUSINESS INTERCOURSE.—The fact that the applicant arrived in the Philippines when he was only 10 years old and has lived here for 44 years continuously except for a few months' visit to Spain, mingling and dealing by reason of his work with people who use Tagalog in their daily intercourse, lends credence to his testimony that he has acquired a good working knowledge of that language.
2. ID.; SPANISH LAWS GRANT FILIPINOS CITIZENSHIP; CERTIFICATION BY CONSUL GENERAL OF SPAIN; SUFFICIENCY.—Articles 17 and 25 of the Spanish Civil Code, among other Spanish legislation, Filipinos are eligible to Spanish citizenship in Spain. As the said Code has been and still is the basic code in force in the Philippines, articles 17 *et seq.* thereof may be regarded as matters known to judges of the Philippines by reason of their judicial functions and may be judicially recognized by them without the introduction of proof. Moreover, the mere authentication or certification of the nationality laws of Spain to that effect by the Consul General of Spain in the Philippines is competent proof of that law.

APPEAL from a judgment of the Court of First Instance of Manila. Rodas, J.

The facts are stated in the opinion of the court.

First Assistant Solicitor General Roberto A. Gianzon and Solicitor Florencio Villamor for appellant.
J. Perez Cardenas for appellee.

TUASON, J.:

Vicente Rosal Pardo, a Spanish citizen born in Spain in 1895 and residing in the Philippines since 1905, where he married a Filipino woman and where he is at present employed, in Manila, with an annual salary of ₱4,800, has been adjudged by the Court of First Instance of Manila entitled to become a Filipino citizen. That the appellee is unable to speak and write any of the principal Filipino languages is the first ground of appeal by the Government.

The applicant testified that he knows enough Tagalog to be understood in that language. Lino Gutierrez, a respec-

table citizen who has intimately known the applicant for 27 years, having had business relations with him, confirmed the applicant's testimony. And the trial judge, who has heard the applicant translate into Tagalog, "He venido residiendo en Filipinas por el periodo de 36 años," appears to have been satisfied with the correctness of the translation (which was not transcribed.) The fact that the applicant arrived in the Philippines when he was only 10 years old and has lived here for 44 years continuously except for a few months' visit in Spain, mingling and dealing by reason of his work with people who use Tagalog in their daily intercourse, lends credence to his testimony that he has acquired a good working knowledge of that language. At one time, according to the evidence, he owned or managed two stores successively on the Escolta, and lately he has been a foreman and warehouseman at Soriano & Co.

The portion of the applicant's testimony which is copied in appellant's brief should not be taken isolatedly and at face value. This testimony is obviously an extravagant understatement of the reality, typifying an extreme modesty which is thought by some to be a virtue. We do not believe that this statement represents appellant's sincere conviction of its literal meaning.

The other assignment of error goes to the sufficiency of the evidence on whether the laws of Spain grant Filipinos the right to become naturalized citizens of that country. The applicant introduced a certificate signed by the Consul General of Spain in the Philippines, stating that in accordance with articles 17 and 25 of the Spanish Civil Code, among other Spanish legislation, Filipinos are eligible to Spanish citizenship in Spain. Article 17 provides that foreigners who have obtained a certificate of naturalization and those who have not obtained such certificate but have acquired domicile in any town of the Monarchy are Spaniards. No discrimination being made in these provisions, they apply to persons of any nationality.

As the Spanish Civil Code has been and still is "the basic code in force in the Philippines, articles 17 *et seq.* thereof may be regarded as matters known to judges of the Philippines by reason of their judicial functions and may be judicially recognized by them without the introduction of proof. (Section 5, Rule 123.) Moreover, in a number of decisions mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila has been held to be competent proof of that law. (*Yap vs. Solicitor General*, L-1602, 46 Off. Gaz [Supp. to No. 1], p. 250; *Leelin vs. Republic of the Philippine*, L-1761; *Yee Bo Mann vs. Republic of the Philippines*, L-1606, 46 Off. Gaz. [Supp. to No. 11], 201; *Jose Go alias*

Joseph Gotianuy vs. Anti-Chinese League of the Philippines and Felipe Fernandez, L-1563.)

The judgment of the lower court is affirmed without costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

Judgment affirmed.

[No. L-2248. April 28, 1950]

In the matter of the petition of Vicente Rosal Pardo to be admitted a citizen of the Philippines. VICENTE ROSAL PARDO, petitioner and appellee, vs. THE REPUBLIC OF THE PHILIPPINES, oppositor and appellant.

1. CITIZENSHIP; PROCEEDING IN NATURALIZATION; STRICT OBSERVANCE OF THE RULES OF COURT NOT OBLIGATORY.—By reason of the provisions of Rule 132 of the Rules of Court, literal adherence to the latter which include rules of evidence is not obligatory in a proceeding in naturalization. While said proceeding under the Philippine law is judicial in character, and strict compliance with the process prescribed by statute, if there were one, would be essential, yet when, as here, no specific procedure is indicated in the premises, it is only necessary that the merits of the petition be passed on and a decision reached on a fair consideration of the evidence on satisfactory proof.
2. ID.; ID.; EVIDENCE OF FOREIGN LAW ON RECIPROCITY.—Evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice by section 41 of Rule 123, may be allowed and used as basis for a favorable action if, in the light of all the circumstances, the court is satisfied of the authenticity of the written proof offered.

RESOLUTION ON MOTION FOR RECONSIDERATION

TUASON, J.:

This case is again before the court, this time on a motion for reconsideration.

In our decision we say: "As the Spanish Civil Code has been and still is 'the basic code in force in the Philippines,' articles 17 *et seq.* thereof may be regarded as matters known to judges of the Philippines by reason of their judicial functions and may be judicially recognized by them without the introduction of proof." (Section 5, Rule 123.)

The court is supposed to know that the Civil Code is the Code of Spain, and this judicial knowledge embraces all its provisions, including those which have ceased to be in operation in the Philippines. This court has said that it is not, by reason of an opinion expressed by an expert witness, precluded from advising itself as to the common law of England. (*Bryan vs. Eastern and Western Asso. Co.*, 28 Phil., 310.) If the court may take cognizance of the common law of England, there is perhaps at least as much reason that it may do so of the Spanish citizenship law,

which was our own citizenship law until Spain relinquished its sovereignty over the Philippines and which is a part of the code that is still the major branch of law of our country although the said part is no longer applicable here.

In the matter of the application of Rafael Roa Yrostoza for naturalization, L-1394 (46 Off. Gaz. [Supp. to No. 11], 179), we said that "There was no proof that Spain had a law which grants Filipinos the right to become naturalized citizens of that country," and returned the case to the court of origin with instruction to reopen the hearing and give the parties new opportunity to establish or disprove the existence of such law. We have to confess that the remand for further proceeding was unnecessary. Oversight is the explanation, made possible by the failure of either party to direct our attention to the articles of the Civil Code of which we have been, in the present case, apprised by the applicant.

In the decision sought to be reconsidered we also say that in a number of decisions, which we cite, mere authentication of the Chinese naturalization law by the Chinese Consulate General in Manila has been taken as competent proof of that law. The Solicitor General takes exception to this passage, in the following observation:

"With regard to the second question under consideration as to whether the certification of the supposed naturalization laws of Spain made by the Spanish Consul General constitutes competent proof of that law, this court cites in support of its opinion the cases of: *Jose Leslin vs. Republic of the Philippines*, G. R. No. L-1761; *Bienvenido Yap vs. The Solicitor General*, G. R. No. L-1602; *Yee Boo Mann vs. Republic of the Philippines*, G. R. No. L-1606; and *Jose Go alias Joseph Gotianuy vs. Anti-Chinese League of the Philippines and Felipe Fernandez*, G. R. No. L-1563. We have carefully gone over these cases and we beg leave to point out that in each of them this court *did not* rule that the mere authentication of the Chinese Naturalization Law by the Chinese Consulate General of Manila constitute competent proof of that law, but that the question as to whether or not the copy of the Chinese Nationality Law presented in said cases were properly authenticated and admissible in evidence to prove reciprocity, as required in section 4(h) of the Revised Naturalization Law, has become academic because of the admission made by counsel for the oppositor (Republic of the Philippines) to the effect that in another case, there has been presented a copy of the naturalization laws of China duly authenticated in accordance with the Rules of Court."

The decisions referred to seem to have been misread. In *Yap vs. Solicitor General*, L-1602 (46 Off. Gaz. [Supp. to No. 1], p. 250), the document admitted, Exhibit E, purported to be "a copy of the Chinese law of citizenship, where it appears that Filipinos can acquire Chinese citizenship by naturalization." There was nothing in that decision which would show that the certificate or authentication was made by a Philippine diplomatic or consular representative in China. In *Jose Leelin vs. Republic of the*

Philippines, G. R. No. L-1761, we said that "in previous cases, a translation of the Chinese Naturalization Law, made and certified to be correct by the Chinese Consulate General in Manila, was admitted and considered sufficient evidence to establish that the laws of China permit Filipinos to become citizens of that country." In *Yee Boo Mann vs. Republic of the Philippines*, L-1606 (46 Off. Gaz. [Supp. to No. 11], 201), the petitioner introduced in evidence a translation of the Chinese Naturalization Law, certified to be correct by the Chinese Consul General in Manila. The court held in that case that the objection to the evidence "is of no moment, since this court has already accepted it as fact in previous naturalization cases that the laws of China permit Filipinos to naturalize in that country." And the court disposed of *Lock Ben Ping vs. Republic of the Philippines*, L-1675 (47 Off. Gaz., 176), on the strength of the pronouncement, just quoted, in the *Yee Boo Mann* decision.

If it be true, as the Solicitor General notes, that in the *Yap* case the *ratio decidendi* was that "there has been presented a copy of the Naturalization Laws of China duly authenticated in accordance with the Rules of Court," then the decision recognized as a fact the existence of a law of China under which Filipinos may be naturalized. Of this fact the court properly assumed judicial knowledge in the cases that came up before it soon after.¹

We realize that a copy of a foreign law certified only by the local consul of the applicant's country does not conform to the requirement concerning the certification and authentication of such law (sec. 41, Rule 123). But the case at bar and the cases cited therein as precedents are not governed by the Rules of Court. Rule 132, entitled "Applicability of the Rules," provides that "These rules shall not apply to land registration, cadastral and election cases, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient." By reason of this provision, literal adherence to the Rules of Court, which include rules of evidence, is not obligatory in a proceeding like that under consideration. While naturalization proceeding under the Philippine law

¹"A judge, where the fact has been ascertained in previous cases, will take judicial notice of: (1) A foreign statute, *U. S. vs. Teschmaker*, 22 How. (U.S.), 392; 16 L. ed., 353; *Graham vs. Williams*, 21 La. Ann., 594. (2) A colonization contract. *Hatch vs. Dunn*, 11 Tex., 708. (3) The procedure in taking up unoccupied lands. *U. S. vs. Teschmaker*, *supra*. (4) The mendacity of Chinese witnesses. *Peo. vs. Lon Yeck*, 123 Cal. 246, 55 p., 984. (5) Where a court has once been properly informed of the terms of a private act and recognized it in a written opinion, the same court in subsequent cases will take judicial cognizance of the act. *Mower vs. Kemp*, 42 La. Ann., 1007; 8 S., 830." (23) C. J. 61, note 39.

is judicial in character, and strict compliance with the process prescribed by statute, if there were one, would be essential, yet when, as here, no specific procedure is indicated in the premises, it is only necessary that the merits of the petition be passed on and a decision reached on a fair consideration of the evidence on satisfactory proof. Accordingly, evidence of the law of a foreign country on reciprocity regarding the acquisition of citizenship, although not meeting the prescribed rule of practice by section 41 of Rule 123, may be allowed and used as basis for a favorable action if, in the light of all the circumstances, the court is satisfied of the authenticity of the written proof offered.

The motion for reconsideration is therefore denied.

Moran, C. J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

Motion for reconsideration denied.

[No. L-2347. January 23, 1950]

**ANSELMO BULASAG ET AL., petitioners, vs. ALIPIO RAMOS and
THE COURT OF INDUSTRIAL RELATIONS, respondents**

LANDLORD AND TENANT; TENANCY CONTRACTS; TENANTS' REFUSAL TO EXECUTE CONTRACT AS JUST CAUSE FOR DISMISSAL.—The landlord is the owner of the farm and as such has the choice in formulating the terms of his contracts of tenancy, provided he does not violate thereby the provisions of the law intended for the protection of the tenants and does not furthermore deliberately impose conditions that are burdensome and injurious to the interest of the tenants. Although the Philippine Rice Share Tenancy Act was intended to give the tenants a better participation in the fruits of their labor, there is nothing in that Act intended to destroy all the attributes of ownership, such, for instance, as the right of the owner to freely dispose of his property in a manner that is not offensive to the limitations contained in said Act. Therefore, if the contracts of tenancy proposed by the owner are not forbidden by specific provisions of the Tenancy Law and are not injurious to the tenants, they must be respected. And tenants' refusal to sign them is a just cause for their dismissal.

PETITION to review on certiorari a decision of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Ceferino Inciong for petitioners.

Jose R. Cabatuando for Alipio Ramos.

• *Arsenio I. Martinez* for Court of Industrial Relations.

MORAN, C. J.:

This is an appeal by a certiorari taken by some tenants who have been dismissed by their landlord for just cause according to the Court of Industrial Relations.

The landlord, Alipio Ramos, filed a petition with the Tenancy Law Enforcement Division of the Department of Justice, asking for authority to dismiss his tenants Anselmo Bulasag, Rafael Garcia, Patricio Diaz, Juan Lopez, Juan Pujante and Segundo Bahia from their landholdings located in the barrio of Santol, municipality of Balayan, Province of Batangas, upon the ground that said tenants refused to sign contracts of tenancy in accordance with law. The authority was granted and the six tenants appealed to the Court of Industrial Relations wherein the authority applied for was also granted. Hence, the instant appeal of this court.

According to the facts found by the Court of Industrial Relations, Alipio Ramos, the landlord, is the owner of 40 hectares of land and has under his administration another 110 hectares of land belonging to his wife, both parcels of land being located in the barrio of Santol, municipality of Balayan, Province of Batangas. Great portions of these lands are planted with sugar cane and smaller portions with rice. Prior to the 1946-1947 agricultural year the sharing between the landlord and his tenants was on a 50-50 per cent basis, the tenants furnishing the work animals, farm implements and defraying a part of the expenses of planting and cultivation. The landlord also shared in said expenses because the harvesters who usually were the planters themselves were given one tenth of the gross produce as compensation. Before the agricultural year of 1947-1948, the landlord advised his tenants to execute tenancy contracts embodying all the requirements of the Philippine Rice Share Tenancy Law (Act No. 4054, as amended) and providing as one of the terms and conditions thereof a sharing basis of 55-45 per cent in favor of the tenants, the landlord to share equally in all the necessary expenses for planting, cultivating, harvesting and threshing. The tenants refused to execute this kind of contract and in turn proposed a sharing basis of 70-30 per cent in their favor. The landlord asked for authority to dismiss his tenants upon their refusal to execute the contracts proffered to them. And the main issue is whether the tenants' refusal to execute said contracts is a just cause for their dismissal. This question was decided by the Tenancy Law Enforcement Division of the Department of Justice and by the Court of Industrial Relations in the affirmative. And consequently the landlord was given authority to dismiss his tenants should they fail to sign within ten days the tenancy contracts offered to them.

The Court of Industrial Relations held that "under the stipulation of facts, the proposal, terms and conditions under which the six respondents may be engaged again as tenants were, in all respects, fair, legal and in accordance with public policy. The proposed conditions are not

unjust, burdensome or prejudicial to the interest of the tenants. On the contrary, the conditions provide them better and improved sharing basis and greater profits compared to the conditions observed by the parties before the conflict arose. The conditions of the proposed tenancy contract having satisfied and complied with all the requirements of the Philippine Rice Share Tenancy Act, as amended, and the ordinances appended thereto, the tenants may freely accept or reject it. The law gives them only this choice."

The contract proposed by the landlord as well as that offered by the tenants are both permitted by law and when as in the instant case the landlord and the tenants fail to reach an understanding, the Tenancy Law Enforcement Division of the Department of Justice in the first instance and the Court of Industrial Relations on appeal may in their discretion and under the circumstances of each case determine which of the two contracts must prevail. And if the contract as proposed by the landlord is favored, refusal of the tenants to sign the same within the time given them, may be deemed to be sufficient cause for their dismissal.

The landlord is the owner of the farm and as such has the choice in formulating the terms of his contracts of tenancy, provided he does not violate thereby the provisions of the law intended for the protection of the tenants and does not furthermore deliberately impose conditions that are burdensome and injurious to the interest of the tenants. Although the Philippine Rice Share Tenancy Act was intended to give the tenants a better participation in the fruits of their labor, there is nothing in that Act intended to destroy all the attributes of ownership, such, for instance, as the right of the owner to freely dispose of his property in a manner that is not offensive to the limitations contained in said Act. Therefore, if the contracts of tenancy proposed by the owner are not forbidden by specific provisions of the Tenancy Law and are not injurious to the tenants, they must be respected. And tenants' refusal to sign them is a just cause for their dismissal.

The decision of the Court of Industrial Relations is affirmed, without costs.

Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

PARÁS, J., dissenting:

I dissent.

Act No. 4054 allows the landlord and the tenant to enter into any tenancy contract not repugnant to existing laws, customs, morals and public policy. This is necessarily a mere option, since a contract requires meeting of the minds

or consent of the parties. Anticipating failure to arrive at, or absence, of, an agreement, said Act has wisely provided that the tenancy shall be on the share basis specified therein. The decision of the majority that compels the tenant to sign a tenancy contract proposed by the landlord and holds that the tenant's failure to do so is a just cause for his dismissal, would nullify the provision of Act No. 4054 that foresees and remedies the very situation where-in the parties fail to execute a contract.

If, as admitted by the majority, the contract proposed by the landlord and that suggested by the tenants are both permitted by law, the former and the latter are mutually to be blamed for their refusal to sign either contract. The action of the majority—which of course merely sustains the decision of the Court of Industrial Relations and the Tenancy Law Enforcement Division of the Department of Justice,—smacks of discrimination and favoritism, because a just and impartial remedy is offered by and found in Act No. 4054, namely, to leave the parties without any contract and thereby to let their tenancy to be governed by said Act.

PABLO, M., disidente:

En mi humilde opinión, la negativa de los aparceros de aceptar la proposición de contrato propuesta por el propietario no es motivo justo para echarles del terreno que están hoy labrando.

La Ley No. 34 de la República consagra la libertad de contratación, y textualmente dice:

"ART. 7. Libertad de contratacion.—El propietario y aparcero tendrán libertad de otorgar cualesquier formas de contrato de aparcería que no contravengan las leyes vigentes ni el orden público y la moral. Tal contrato será prueba concluyente de lo convenido entre las partes, excepto en caso de fraude o error, si dicho contrato no es denunciado o impugnado dentro de los treinta días después de su inscripción en la tesorería municipal, según se prescribe en el artículo cinco de esta Ley."

De acuerdo con esta disposición, el aparcero debe dar su consentimiento a la proposición del propietario libre y espontáneamente, sin amenaza o coacción de ningún genero. La amenaza como el fraude es elemento que vicia todo contrato. Si el propietario está facultado para echar al aparcero por el simple hecho de rehusar su proposición de contrato, entonces el obrero no obraría libremente. Está suspendida sobre su cabeza la amenaza de ser desposeído del terreno, a menos que estampe su firma en el contrato propuesto por el propietario. Eso es fascismo agrícola en agraz. Un convenio no es válido si no es con el concurso de las voluntades de los contratantes. El artículo 1261 del Código Civil claramente dispone que no hay contrato sino cuando concurre el consentimiento de las partes. En un contrato de aparcería en que el aparcero dé su con-

sentimiento a una proposición del propietario por el temor de ser echado de la finca si no la acepta, no es contrato. Para poner de relieve la injusticia de la teoría, basta alterar los factores. ¿Es justo que al propietario se le obligue, bajo amenaza, a aceptar la proposición del aparcero? Ninguno se atreverá a dar una contestación afirmativa. Tampoco debe ser justo que al inquilino se le obligue a aceptar la proposición del propietario.

Es cierto que la proposición del propietario Alipio Ramos está dentro de los límites marcados por la ley. Con todo, no es razón para que se obligue a los aparceros a aceptarla, como irrazonable es obligar al propietario a aceptar la proposición del aparcero aunque está dentro de los límites marcados por la ley. Para que haya igualdad, es indispensable que el aparcero tenga la libertad de aceptar o no cualquiera proposición del propietario, como está el propietario completamente libre para rechazar o aceptar cualquiera proposición del aparcero. Obligar al aparcero a aceptar la proposición del propietario es privarle de su derecho de ejercer su libre albedrío, es privarle de lo que le concede la ley de aparcería: la libertad de contratación.

Debe revocarse la decisión apelada.

Decision affirmed.

[No. L-711. January 28, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
AMADO PAÑGANIBAN, accused and appellant

CRIMINAL LAW; TREASON; ACCUSED'S ADHERENCE AND GIVING AID AND COMFORT TO THE ENEMY CONSTITUTE TREASON.—In the face of the facts proven in this case, the conclusion is inevitable that the appellant is guilty of treasonable acts, in violation of the provision of article 114 of the Revised Penal Code as amended. During the three years of occupation of the municipality of Lobo, Batangas, by the Japanese garrison, he had done his best to further the war effort of the enemy to the prejudice of the interest of his countrymen. Notwithstanding that he, as a Filipino citizen, owed allegiance to the United States of America and the Government of the Commonwealth of the Philippines, he had made up his mind that the American sovereignty would not be restored in the Philippines. In fact on the third Sunday of June, 1943, a few days before the alleged attempt to assassinate him, in a speech he delivered in the cockpit of Lobo, he admonished those who had relatives among the guerrillas, to tell them to surrender to the Japanese because Japan was bound to win the war and the Americans would not return until after many years.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Tomas P. Pañganiban and Nicetas Suanes for appellant.
Acting First Assistant Solicitor General Roberto A. Gianzon and Solicitor Felix V. Makasiar for appellee.

TORRES, J.:

Amado Pañganiban was prosecuted before the People's Court for treason under article 114 of the Revised Penal Code. The information embodies six counts, but after trial the People's Court found him guilty of the first four counts, and dismissed the fifth and the sixth counts. Holding him guilty of treason, the court sentenced him to death and to pay a fine in the sum of ₱15,000 and the costs. This case is before us for review of, and by virtue of appeal taken by Pañganiban from, the judgment of conviction rendered against him by the People's Court.

When in the early part of 1942, the Japanese invading forces occupied the municipality of Lobo, Province of Batangas, the mayor and other town officials and a great portion of the population left the town. The defendant, however, who was chief of police, remained in his post and met the Japanese forces, thus initiating a close contact of collaboration with the enemy.

A résumé of the evidence is as follows:

First count.—To substantiate the charge made in this count, the prosecution, proved that at 9 o'clock in the evening of December 27, 1943 in Lobo, Batangas, defendant shot Felicísimo Godoy and as a result thereof the victim died at 2 o'clock the following day, without any help to save his life, because defendant prohibited members of the family of the victim from doing so. Defendant even prevented the father of the victim from taking his son to the municipality of Batangas, because according to him Godoy should die because he was "a bad man and a guerrilla."

On that night, Godoy was trying to enter a gambling den conducted by Gerardo Marasigan and when a policeman, at the request of Marasigan, was going to search him for firearm Godoy ran away. According to Marasigan, Godoy was making trouble in the gambling place and when Godoy was shot by the accused the former was sitting on a culvert near the intersection of Regidor and Burgos streets of said town. The evidence shows that the defendant fired at Godoy at a distance of about two meters while Godoy was standing with the body inclined forward. The bullet entered the body just above the heart and came out near the waistline. Although appellant admits the shooting, he alleges self-defense. But it has been shown that Godoy, who was unarmed, was only starting to rise from his sitting position when the defendant, who was standing in front of his victim, suddenly fired at the latter, who exclaimed: "Mayor, why did you shoot me? What have I done?"

Defendant knew that Godoy was engaged in guerrilla activities since April, 1943, and prior to this there was an

attempt against his life on June 30, 1943 in Batangas, Batangas. Defendant suspected as authors thereof, a group of guerrilla leaders composed of Colonel Espina, Major Aguirre, Captain Boruel, the De Chaves brothers and Godoy. Before shooting Godoy he made the latter admit that he was a member of the guerrillas.

Upon consideration of the evidence submitted by the prosecution in connection with the killing of Godoy it may not be amiss to state that, aside from the fact that appellant with the chief of police and four policemen brought Godoy in a very serious condition to the latter's house and left almost immediately, it has been shown that upon hearing that Godoy's father and other relatives were making arrangements to take the injured man to Batangas, the provincial capital, in a last and desperate effort to save his life, this appellant came back with two armed Japanese soldiers and told the relatives of his victim that they should not take him to Batangas, but should let him die "because he is a bad man, he being a guerrilla." It is thus that out of sheer fear of defendant, who was all-powerful in the town, and notwithstanding his unsupported contention that he had used some iodine on the wound of his victim, Godoy was let to die at about 2 o'clock in the afternoon of the following day, without adequate medical assistance.

As to appellant's allegation that he acted in self-defense, the evidence plainly shows that it was a last effort made by the accused to distort the facts and justify his criminal act of shooting Godoy at the time when the latter had not given any cause for the sudden attack made upon him and which resulted in his death. Moreover, it has been also proven that, during the exchange of words between appellant and his victim, the latter finally admitted to the former that he was a member of the guerrillas. Under those circumstances, we can safely conclude that as an active demonstration of appellant's adherence to the enemy, Godoy was killed by him because of his connection with the guerrillas and, also, because he could not forget the attempt against his life by some members of the guerrillas.

Second count.—Emilio Boruel was a guerrilla captain attached to the Fil-American guerrilla forces and then later to the PQOG (President Quezon's Own Guerrillas). On April 29, he was arrested by the municipal police of Lobo, locked in the municipal jail and later taken to the Japanese garrison and executed on the same day.

It appears that at about 11 o'clock of April 29, there was a fight in the Lobo cockpit between Emilio Boruel and Eugenio Gonzalvo, a barrio lieutenant, when the former tried to collect a debt from the latter. The defendant was in the cockpit and ordered a policeman to arrest Boruel and to lock him in the municipal jail. After the policeman had left the cockpit with Boruel, the defendant addressed the

crowd in the cockpit and told them these words: "The end of Emilio is at hand." The defendant then went to the Japanese garrison where he talked briefly with a Japanese soldier who was then carrying a saber. Following an exchange of a few words with the soldier, defendant went inside the garrison and came out with six soldiers who accompanied the defendant to the municipal building. After tying Boruel, the Japanese soldiers took him to the Japanese garrison and after about thirty minutes he was again taken out of the garrison and conducted to the river where he was killed with bayonet thrusts and then buried. It should be remembered that Boruel was one of those suspected by the defendant as being connected with the attempt against his life when he was in a restaurant one morning before the incident at the cockpit.

The defendant admitted that Boruel and Gonzalvo had a fight in the cockpit, but denied that he was present at that place when a policeman arrested Boruel and took the latter to the municipal jail. The appellant said that he went to the cockpit to make inquiries and that when he went to the municipal jail to look for Boruel the latter was no longer there because he was taken by Japanese soldiers, and that when he went to the Japanese garrison to save Boruel from punishment or death, the Japanese commander informed him that Boruel has been liquidated for being a bad man, and that it was the second time that Boruel has been locked in the garrison following his fight with Gonzalvo who was friendly to the Japanese.

It appears, however, that although councilor Gonzalvo was one of the participants in the row in the cockpit, he was not arrested. Notwithstanding all the protestations of appellant, we are satisfied that his lone testimony in this regard cannot prevail upon the affirmative statements made by several witnesses for the prosecution to the effect that appellant was present in the cockpit when the fight took place, and that he was instrumental in the arrest of Boruel and his final disposition as already stated. Although in this particular instance it cannot be affirmed that he was directly responsible for the liquidation of Boruel, yet the arrest of the latter by a policeman upon orders of this appellant led to the killing of said victim by the members of the Japanese garrison.

Third count.—Frank O. Bacon and three other Americans, who turned out to be former employees of Marsman and Company, were in hiding in the barrio of Sawang, Lobo, about the month of April, 1942 while trying to contact Mindoro guerrillas. Those four Americans refused to be concentrated at the beginning of the war and preferred to cast their lot with the guerrillas. They often visited the town of Lobo and the defendant knew of their whereabouts. The defendant, fearing that the Japanese

would know sooner or later about their presence in the town, advised them to surrender to the Japanese, but the Americans refused to do so. Then he advised them to move to Lahia, another barrio of Lobo, but only two of them—Johnson and Meyer—seemed to have followed the suggestion, while the other two, Bacon and Ralph, remained in barrio Sawang, or, according to defendant, moved to Malabrigo. To both groups, defendant sent word to leave their places because the Japanese were coming, but the Americans simply replied: "Let them come."

One day, defendant, his chief of police and several policemen, surrounded the hiding place of the Americans. And in order to avoid a clash with the Americans, he sent a messenger to tell them that Tomas Villanueva, the mayor who refused to serve under the Japanese, was waiting for them there in the seashore. The Americans in good faith believed the truth of the message. As soon as they left, the defendant and his men ransacked their house and carried away their rifles, ammunition, blankets and other personal belongings. Defendant admits that he himself confiscated the arms of the Americans.

Gabriel Gutierrez, testifying for the prosecution, said that, at about eleven in the morning of May 25, 1943, while he was in the office of the commander of the Japanese garrison in Batangas, the accused arrived and reported to the Japanese officer that he had confiscated the firearms and other personal belongings of the four Americans, who were hiding in the barrio of Sawang, and that the defendant turned over the confiscated firearms to the Japanese commander. This fact, was corroborated by Francisco Boruel, brother of the deceased Emilio Boruel, who was in a nearby store when the defendant and his policemen arrived, followed by a big crowd, in front of the municipal building of Lobo carrying the rifles, ammunition, blankets and other personal belongings of the Americans who were hiding in Sawang. On that particular occasion the defendant explained to the crowd how he had enticed those four Americans to the seashore and by means of a ruse took possession of their belongings. The testimony of the two above named witnesses is strengthened by that of Frank O. Bacon, one of the Americans in question.

In his defense, appellant said that his attitude in the premises was due to the fact that he wanted to protect himself and the townspeople from the Japanese; that previously he had informed the Japanese that there were no Americans nor guerrillas in the municipality of Lobo, and that, should the Japanese learn that his information was not true, he would have been liable to punishment by the Japanese.

The fourth and last count on which this defendant was found guilty is based on the testimony of witnesses who

stated that on March 25, 1945 the appellant sent food-stuffs, consisting of vegetables, chickens, eggs, one pig and so forth to Japanese soldiers who had retreated to the hills in the barrio of Calo, Lobo, Batangas. Those food-stuffs were collected by defendant from the townspeople who were compelled to give what they could to feed those Japanese soldiers formerly stationed in the *población* of Lobo. A group of fifty men, like beasts of burden, were compelled by appellant to take the foodstuffs on their shoulders to Mount Calo.

Explaining his conduct, the defendant said that in the afternoon of May 27 he received a note from Captain Terada, the officer in command of those Japanese soldiers, demanding that food be sent to his command quickly, otherwise they will kill the people and come down from the mountain to burn the town and massacre its inhabitants.

The People's Court remarks that no reliable evidence regarding the supposed message of the Japanese was presented to support this contention. An acting barrio lieutenant of Calo, who was supposed to have been the one through whom the Japanese sent the message to the town, could not assert that he had read the contents of such note. And even assuming that there was such request from the Japanese commander of the garrison to supply him and his soldiers with food, the fact is that at that time the American forces had already landed in the Province of Batangas, and according to the evidence they were already in Lobo the day before appellant sent those foodstuffs to the Japanese.

Appellant further knew that there were guerrilla units operating in and around the territory of the municipality of Lobo, to whom he could have asked for help in case the Japanese carried out their threat to kill the population and burn the town, if the foodstuffs were not sent to them in Mount Calo, but evidently his adherence to the Japanese made him disregard the actual conditions then obtaining in the municipality, and induced him to come to the help of his friends, the former Japanese occupants of the municipality, over and above the changed situation resulting from the arrival of the forces of liberation.

In the face of the facts proven in this case, the conclusion is inevitable that the appellant is guilty of treasonable acts in violation of the provisions of article 114 of the Revised Penal Code as amended. Even if we should consider that he cannot be held responsible for the death of Emilio Boruel, a guerrilla captain, and regard that the killing of Felicísimo Godoy was caused by this appellant to avenge an alleged attempt against his life, yet the record contains abundant proof that, during the three years of occupation of the municipality of Lobo by the Japanese

garrison, he had done his best to further the war effort of the enemy to the prejudice of the interest of his countrymen, because notwithstanding the fact that he, as a Filipino citizen, owed allegiance to the United States of America and the Government of the Commonwealth of the Philippines, he had made up his mind that the American sovereignty would not be restored in the Philippines. In fact on the third Sunday of June, 1943, a few days before the alleged attempt to assassinate him, in a speech he delivered in the cockpit of Lobo, he admonished those who had relatives among the guerrillas, to tell them to surrender to the Japanese because Japan was bound to win the war and the Americans could not be expected to return until after many years.

As above stated, the People's Court sentenced the appellant to the penalty of death, but, upon careful consideration of the treasonable acts committed by this appellant, we are satisfied that the ends of justice will be served if the penalty of *reclusión perpetua* is imposed herein. Amado Pañganiban is therefore sentenced to *reclusión perpetua* with the accessories of the law. Thus modified, the judgment under review is otherwise affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment modified; penalty reduced.

[No. L-1986. January 28, 1950]

PLACIDA CLEMENTE DE BELARMINO and MAURO BELARMINO, plaintiffs and appellants, *vs.* PEDRO DE MESA, defendant and appellee.

1. OBLIGATIONS AND CONTRACTS; WORDS AND PHRASES; "PHILIPPINE CURRENCY," MEANING OF.—The phrase "Philippine currency" appearing in the mortgage contract was intended to describe the amount of money given as a loan and not to designate a particular currency as medium of payment. And, there being no stipulation to the contrary, though the money lent to the debtors was in Philippine Commonwealth currency, it could be paid in any currency that is lawful money and legal tender in the Philippines at the time payment is to be made.
2. *Id.*; JAPANESE MILITARY NOTES AS LEGAL TENDER.—Japanese military notes issued during the Japanese occupation were legal tender and could be used validly during such occupation for payment of mature debts.

APPEAL from a judgment of the Court of First Instance of Laguna. Bautista Angelo, J.

The facts are stated in the opinion of the court.

Camus, Zavalla, Bautista & Nuevas for appellants.
Lorenzo Sumulong for appellee.

MORAN, C. J.:

This is an appeal upon a question of law taken from a decision of the Court of First Instance of Laguna wherein the action brought by plaintiffs-appellants against defendant-appellee was dismissed.

In the mortgage contract executed by appellants in favor of appellee on November 18, 1940 it was agreed, among others that:

"The condition of this mortgage is such that if the mortgagor shall well and truly pay or cause to be paid to the mortgagee, his heirs or assigns, within five (5) years from the execution of this instrument, the said seven thousand five hundred (7,500) pesos, Philippine currency, in accordance with the terms hereof, then this mortgage shall remain in full force and effect and be enforceable according to law."

Under this agreement the mortgage loan was payable within five years from November 18, 1940 which is the date of its execution. Payment was tendered by appellants some time in January 1944 but the appellee refused to accept it and the whole amount of ₱7,500 in Japanese military notes was deposited with the clerk of court with notice to appellee. And at the same time appellants filed a complaint to compel the appellee to accept the money thus deposited and cancel the mortgage. After trial, the lower court dismissed the action upon the ground that the appellee was not bound to accept payment in Japanese military notes not only because the money lent to appellants was genuine Philippine money and therefore should be paid in the same currency, but also because in the mortgage agreement there is a stipulation to the effect that payment should be made in Philippine currency.

The phrase "Philippine currency" appearing in the mortgage contract was intended to describe the amount of money given as a loan and not to designate a particular currency as medium of payment. And, there being no stipulation to the contrary, though the money lent to the debtors was in Philippine Commonwealth currency, it could be paid in any currency that is lawful money and legal tender in the Philippines at the time payment is to be made. (40 Am. Jur., 751, sec. 56; see also Act 1170 and Civil Code.) Thus a debt of ₱12,000 created in 1876 in gold coin, may now be paid by ₱12,000 of the Philippine silver pesos. (Rogers vs. Smith Bell & Co., 10 Phil., 319.) And it has been held "that debts created when the only legal-tender money was gold and silver could be paid in paper money issued by the Government and which had no intrinsic value." (Rogers vs. Smith Bell & Co., *supra*; Legal-Tender Cases, 12 Wall., 457; Dooley vs. Smith, 13 Wall., 604; Railroad Co. vs. Johnson, 15 Wall., 195; Mary-

land *vs.* Railroad Co., 22 Wall., 105.) And in the Philippines it is a settled rule that Japanese military notes issued during the Japanese occupation were legal tender and could be used validly during such occupation for payment of mature debts. (*Haw Pia vs. China Banking Corporation*, 45 Off. Gaz. [Supp. to No. 9], 229.)

It is therefore adjudged that the deposit in court of the sum of ₱7,500 in military notes made by plaintiffs-appellants is valid and defendant-appellee was bound to accept it in payment of the mortgage loan and consequently defendant-appellee is hereby ordered to execute a release of the mortgage in favor of plaintiffs-appellants. Judgment appealed from is reversed without costs.

Ozaeta, Parás, Bengzon, Montemayor, Reyes, and Torres, JJ., concur.

TUASON, J., concurring in part:

I don't think it is right or in accordance with law to legalized the payments of pre-war debts with Japanese notes forced upon the creditors against their will. At the most, a payment under these circumstances should be held to discharge the contract to the extent of the value of the notes, under the Ballentyne scale, at the time the payment was made, just as debts incurred during the Japanese occupation are payable after liberation, as this Court has ruled, with genuine Philippine currency according to Mickey mouse's purchasing power in the absence of an express agreement.

The decision in *Haw Pia vs. China Banking Corporation*, (45 Off. Gaz. [Supp. to No. 9], 229), to the contrary notwithstanding, the Japanese war notes were not legal tender. But granting that the *Haw Pia* decision is the law, it should not be enforced at the almost total expense of justice and righteousness. Certainly, there ought to be no quarrel in reconciling the law's majesty with its ministry when the law derives its force from a judge-made decision as differing from a positive, clear legislative enactment, and is of doubtful soundness.

Validation of the payment or consignment in this case inevitably implies validation of payments with Japanese war notes of pre-war debts against the creditors' will, effected in December, 1944 or January, 1945, when those notes were hardly worth the paper they were printed on, thus virtually writing off such obligations. That, it is submitted, is not justice, it is not right, and it is not human under any concept or precept.

PABLO, M., disidente:

Por las razones expuestas en mi disidencia en el asunto de Alejandro Andres y otro *contra* El Tribunal de Apelación y otros, R. G. No. L-1773, la consignación hecha por

el deudor de 7,500 en billetes de moneda japonesa no es válida de acuerdo con las disposiciones del Código Civil. Por tanto, la deuda no está pagada. Debe confirmarse la sentencia apelada.

PADILLA, J., dissenting:

I dissent for the reasons set forth in my opinion in the cases of Antonio del Rosario et al., *vs.* Carlos Sandico et al., G. R. No. L-867; and La Orden de Padres Benedictinos de Filipinas *vs.* The Philippine Trust Company, G. R. No. L-2020, which were promulgated on 29 December 1949.

Judgement reversed.

[No. L-2003. January 28, 1950]

FILEMON ARCIGA, petitioner, *vs.* ERNESTO DE JESUS, Justice of the Peace of Basud, Camarines Norte, PAULINO VY ERA and PURIFICACION ARCIGA, respondents.

LANDLORD AND TENANT; RICE TENANCY ACT DOES NOT APPLY TO TENANCY OF COCONUT LAND.—There have so far been enacted two tenancy statutes, namely, Rice Share Tenancy Act (Act No. 4054) and Sugar Tenancy Act (Act No. 4113). As the land here in question is admittedly coconut land, as to which no tenancy law has yet been promulgated, the dispute between the parties (even admitting the same to be one of tenancy as alleged by the petitioner) does not fall under the jurisdiction of the agencies specified in Commonwealth Act No. 461, as amended by Republic Act No. 44.

ORIGINAL ACTION in the Supreme Court. Prohibition.

The facts are stated in the opinion of the court.

Victoriano Yamzon for petitioner.

Generoso F. Obusan for respondents.

PARÁS, J.:

In November, 1947, the herein respondents Paulino Vy Era and Purificacion Arciga filed in the justice of the peace court of Basud, Camarines Norte, a complaint for ejectment (civil case No. 2) against the herein petitioner Filemon Arciga. The latter filed a special appearance alleging that since the year 1937, he has been occupying the land from which he is sought to be ejected as tenant of the respondents and has not been paid for the coconuts he had planted, and other improvements he had built, thereon as well as for his services as such tenant. The petitioner accordingly impugned the jurisdiction of the justice of the peace court, contending that the resulting tenancy dispute pertains to the Department of Justice and the Court of Industrial Relations in accordance with Commonwealth Act No. 461, as amended by Republic Act No. 44. The respondent justice of the peace overruled the contention

of the petitioner and proceeded to set the case for hearing. It is for the purpose of preventing the respondent justice of the peace from assuming jurisdiction over the case that the present petition for prohibition was instituted by the herein petitioner.

Commonwealth Act No. 461, as amended by Republic Act No. 44, provides that in all cases where land is held under any system of tenancy, the tenant shall not be dispossessed of the land cultivated by him except for any of the causes mentioned in section 19 of Act No. 4054, or for any just cause, and without the approval of a representative of the Department of Justice duly authorized for the purpose, and should the landowner or tenant feel aggrieved by the action taken by the Department of Justice, or in the event of any dispute between them arising out of their relationship as landowner and tenant, either party may appeal or resort to the Court of Industrial Relations which is given jurisdiction to determine the controversy in accordance with law. Said Act also provides that the Department of Justice is, likewise, charged with the duty of enforcing all the laws, orders and regulations relating any system of tenancy.

It is noteworthy that previous to the amendment introduced by Republic Act No. 44, the Department of Justice was "charged with the duty of enforcing the Rice Share Tenancy Act"; whereas under Republic Act No. 44, this duty extends to the enforcement of "all the laws, orders and regulations relating to any system of tenancy." In explaining the change under the latter Act, its sponsor (Congressman Roy) stated: "The one special feature of those proposed amendments is to cover also the other Tenancy Act or the Sugar Tenancy Act (Act No. 4113, as amended). As it is now, no agency can enforce the rights of the parties in the Sugar Tenancy Act. Act No. 608 provides simply for the enforcement of the Rice Tenancy Act (Act No. 4054). This proposed measure will cover all and other tenancy acts which will be enacted."

This explanation gives way to the unmistakable legislative intent to apply the provisions of Commonwealth Act No. 461, as last amended by Republic Act No. 44, only to tenancies specially covered by tenancy laws. There have so far been enacted two tenancy statutes, namely, Rice Share Tenancy Act (Act No. 4054) and Sugar Tenancy Act (Act No. 4113). As the land here in question is admittedly coconut land, as to which no tenancy law has yet been promulgated, the dispute between the parties (even admitting the same to be one of tenancy as alleged by the petitioner) does not fall under the jurisdiction of the agencies specified in Commonwealth Act No. 461, as amended by Republic Act No. 44.

The petition will therefore be dismissed, and it is so ordered, with costs against the petitioner.

Moran, C. J., Ozaeta, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Petition dismissed.

[No. L-2095. January 28, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
FAUSTO CLAMANIA ET AL., defendants. FAUSTO CLAMANIA, appellant.

1. AMNESTY; PROCLAMATION No. 8; REQUISITES TO SHOW TO AVAIL ITS BENEFITS.—To come within the terms of the Guerrilla Amnesty Proclamation, it is necessary to show that the crime was committed “in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy.”
2. CRIMINAL LAW; MURDER; WHEN AGGRAVATING CIRCUMSTANCES OF NIGHTTIME, UNINHABITED PLACE AND “ENSAÑAMIENTO” NOT CONSIDERED.—Nocturnity is absorbed by treachery by which the killing is qualified; there is no proof that Can-usod Island was uninhabited, and the disemboweling of the deceased was not an unnecessary mutilation or deliberate and wanton augmentation of the suffering of the offended parties. For when the disemboweling was effected, the victims were already dead, and the operation was conceived solely for the purpose of facilitating the sinking of the cadavers and preventing their discovery.

APPEAL from a judgment of the Court of First Instance of Samar. Benitez, J.

The facts are stated in the opinion of the court.

Jose D. Cortes for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Francisco Carreon* for appellee.

TUASON, J.:

The question presented on this appeal is whether the appellant is entitled to the benefits of Guerrilla Amnesty Proclamation No. 8. The truth of the evidence for the prosecution was confirmed in its material aspects by the defendant.

Apolinario Inciso and Modesto Delantar, two witnesses for the prosecution, testified in substance that on the night of September 26, 1942, in barrio Lawaan, Balangiga, Samar, they were forced by the accused at the point of a revolver to accompany him to the beach. At the beach they saw Juan Grafil and Apolinario Gahoy on a boat with their hands tied behind their backs. With Apolinario Inciso at the helm, Delantar and the accused rowed the boat with the victims on board to Can-usod Island. There, Grafil and Gahoy were taken ashore and beaten to death by Fausto Clamanian with an oar. After Grafil and Gahoy were killed

the accused ripped their abdomens to let out the bowels, attached stones as weights to the bodies, tied the bodies to the craft, and then hauled them to deep water where they were released.

As above stated, the defendant admitted the above testimony, except that which says he had a firearm and coerced the prosecution witnesses into following him.

Explaining why and how he slew Grafil and Gahoy, the accused testified that he lived in barrio Lawaan, Balangiga, Samar. He knew one Manuel Japzon, a constabulary non-commission officer, stationed in Borongan before the outbreak of the war. In August, 1942, Japzon organized in Lawaan a guerrilla unit which he (accused) joined as a volunteer. According to Japzon, the defendant said, the object of the organization "was to protect the right of the barrio people from the abuses of bad people." Morning and afternoon, the members of the unit drilled and mounted guard "against wrong doing."

On September 25, 1942, the accused saw Grafil and Gahoy in the school building with their hands bound. Having been detailed by Japzon to guard the two prisoners on that date, he came to know that Japzon had ordered six USAFFE men to arrest Gahoy and Grafil; and the proceedings, which he overheard, at the investigation of the prisoners revealed to him that they "had stolen things from the barrio and had caused trouble."

On the following day, he further said, Japzon ordered him, Inciso and Delantar to kill Grafil and Gahoy, who were already on the boat, shackled. Japzon said, "You leave now," and he (defendant) and the Government witnesses hurried to the seashore and rowed the boat to Canusod Island. He struck the victims with an oar and, in accordance with Japzon's instruction, opened the abdomen before casting the corpses into the sea, in order to prevent them from floating and from being seen by other people. After killing Gahoy and Grafil and disposing of their bodies, he and his companions rowed back to Lawaan where he gave Japzon an account of what he had done.

Japzon did not testify either for the prosecution or for the defense, nor does it appear that any attempt by either side was made to subpoena him. He was said to be still in the Constabulary, stationed in Manila, at the time of the trial.

As stated at the outset, the appellant's sole reliance for acquittal is on the Guerrilla Amnesty Proclamation.

To come within the terms of this proclamation, it is necessary to show that the crime was committed "in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy." Neither of these requisites was present. Granting the two deceased had committed thefts and robberies, these deeds in no way gave

aid and comfort to the enemy or impeded the resistance against them. As a matter of fact, as far as the record would show, the Japanese had not yet shown up in Lawaan, and Grafil and Gahoy had not had any occasion to help them. Officials under the Commonwealth Government, it would seem, were still in control of the municipality.

The appellant has been sentenced to death. We agree with the Solicitor General that the aggravating circumstances of nighttime, uninhabited place and *ensañamiento* found by the trial court, have been erroneously appreciated. Nocturnity is absorbed by treachery by which the killing is qualified; there is no proof that Can-usod Island was uninhabited, and the disemboweling of the deceased was not an unnecessary mutilation or deliberate and wanton augmentation of the suffering of the offended parties. For, when the disemboweling was effected, the victims were already dead, and the operation was conceived solely for the purpose of facilitating the sinking of the cadavers and preventing their discovery.

The proper penalty therefore should be *reclusión perpetua* instead of death. However, two murders have been perpetrated, for each of which one separate penalty of *reclusión perpetua* should be imposed. The lower court also failed to provide for the payment of indemnity; the defendant should be sentenced to pay ₱6,000 to the heirs of Juan Grafil and ₱6,000 to the heirs of Apolinario Gahoy.

With these modifications, the judgment of conviction is affirmed, with costs of this appeal against the appellant.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

Judgment modified.

[No. L-2540. January 28, 1950]

BENIGNO S. VIRAY, petitioner, *vs.* THE AMNESTY COMMISSION OF THE ARMED FORCES OF THE PHILIPPINES, and JUAN D. CRISOLOGO, respondents.

1. AMNESTY; PROCLAMATION NO. 8; STAGES WHEN IT MAY BE INVOKED BY THE ACCUSED.—The amnesty may be invoked at any stage of the criminal proceedings—before trial, during trial, after conviction and pending appeal.
2. ID.; ID.; EXTENT AND SCOPE OF ITS BENEFITS; MEMBERS OF REGULAR ARMY INCLUDED.—There is no reason why the benefits of the amnesty should be confined to a certain portion of the population that heroically operated and fought against the enemy to the exclusion of another portion which because of its discipline, training and equipment, may have equally fought and operated, perhaps even more effectively, though for a shorter period of time, against the enemy.
3. ID.; ID.; ID.; ID.—It would be quite unfair and unjust to exclude from the benefits of the Amnesty Proclamation those who not only through patriotic motives but because of their membership

in the Armed Forces were called upon and were obliged to resist the enemy may have had occasion to commit acts and offenses penalized by the Revised Penal Code and who now invoke the benefits of the Amnesty Proclamation.

4. *Id.*; *Id.*; *Id.*; PLEA OF NOT GUILTY AS NOT INCOMPATIBLE WITH PETITION FOR AMNESTY.—A plea of not guilty to a charge of or complaint for an offense does not necessarily mean that the accused in so pleading disclaims the commission of the act. The plea may equally imply that admitting the commission thereof, nevertheless, he is not criminally responsible. A plea of not guilty is therefore not incompatible with a petition for amnesty.

ORIGINAL ACTION in the Supreme Court. Prohibition.

The facts are stated in the opinion of the court.

McClure, Salas & Gonzalez for petitioner.

Ferdinand E. Marcos for Juan D. Crisologo.

Fred Ruiz Castro for Amnesty Commission, Armed Forces of the Philippines.

Pio Joven as *amicus curiæ*.

MONTEMAYOR, J.:

This is a petition for a writ of prohibition filed by Benigno S. Viray against the Amnesty Commission of the Armed Forces of the Philippines and Juan D. Crisologo, seeking to prohibit the respondent Amnesty Commission from taking jurisdiction over the petition for amnesty filed before it by its co-respondent Crisologo. The facts necessary for a proper understanding and decision of this case, gathered from the pleadings, including their annexes, may be briefly stated as follows:

Respondent Crisologo now confined at the stockage of the Armed Forces of the Philippines, is a regular Philippine Army Officer (Major) graduated at the old Philippine Constabulary Academy in 1923. He served continuously for twenty-seven years in the Philippine Constabulary and was inducted into the United States Armed Forces in the Far East (USAFFE) in 1941 as captain and was assigned "S-2" (intelligence) of the Zamboanga Sector, USAFFE under Colonel Wilson. During the first months of the war with Japan, particularly in the month of March, 1942, after Zamboanga was said to have been invaded or occupied by the Japanese forces, Crisologo was alleged to have ordered the execution of eight persons among them, one Boy Viray. For this act, he was charged before a general court martial with murder, was tried and convicted and later sentenced to life imprisonment by the said court martial. At the beginning of the trial he refused to take advantage of the benefits of Amnesty Proclamation No. 8 of President Roxas. After conviction however, and on June 8, 1948, he filed an application with the respondent Amnesty Commission, invoking said Amnesty Proclamation.

Present petitioner Benigno S. Viray, father of Boy Viray, one of the eight ordered executed by Crisologo, immediately filed a petition with the respondent Commission opposing Crisologo's application for amnesty on the ground that Crisologo was not entitled to it because he was not a member of the guerrilla forces when he ordered the execution of his son Boy Viray; that Crisologo is now estopped from invoking amnesty because he had already once refused it; that inasmuch as he did not admit having committed the offense of which he was accused, then he could not very well invoke the amnesty that covered and extinguished it; and finally, since the decision convicting him of murder has not yet become final but is still subject to review by higher authorities, it is premature to ask for amnesty. This petition was followed by a pleading wherein Viray questioned the jurisdiction of the Amnesty Commission to take cognizance of and decide Crisologo's application for amnesty.

In resolution No. 29, series of 1948, of the respondent Commission, said body held that it had jurisdiction over the application. Dissatisfied with said resolution Viray has filed the present petition for a writ of prohibition.

In our opinion the fact that respondent Crisologo had declined to take advantage of the Amnesty Proclamation at the beginning of his trial before the court martial does not now preclude him from invoking it, especially after he was found guilty and convicted. Before his trial, he may and he must have entertained the idea and the belief that the killing was justified and was done in the performance of his duties as an official according to the criminal law, and that consequently, there was no need for amnesty. However, after the court martial had disagreed with him and disabused him of his belief, he realized the necessity of invoking amnesty. There is nothing in the law that stands in his way toward seeking the benefits of a law which in his opinion covers and obliterates the act of which he had been found criminally responsible.

As to the alleged incompatibility of his plea of not guilty before the court martial with his present petition for amnesty, we fail to find any such inconsistency. It must be borne in mind that a plea of not guilty to a charge of or complaint for an offense does not necessarily mean that the accused in so pleading disclaims the commission of the act. The plea may equally imply that admitting the commission thereof, nevertheless, he is not criminally responsible. In the present case, there is nothing to show that Crisologo denied having ordered the execution of the eight persons, including Boy Viray. On the contrary, it seems that he admits having given such order of execution but that he claims that the persons he ordered executed were aiding the enemy.

Furthermore, this point has already been passed upon by this court in the case of *Barrioquinto vs. Fernandez*, L-1278 (46 Off. Gaz., 3031), where it was held that "in order to entitle a person to the benefits of the amnesty proclamation of September 17, 1946 (Proclamation No. 8), it is not necessary that he should, as a condition precedent or *sine qua non*, admit having committed the criminal act or offense with which he is charged and allege the amnesty as a defense." One of the reasons given in support of that doctrine was that a contrary ruling would be unjust and disadvantageous to the accused because to require him to admit having committed the offense or being responsible therefor before he could invoke the benefits of amnesty, since there is no law which makes such admission or confession inadmissible as evidence against him in court during trial, in the event that the Amnesty Commission finds that the offense does not come within the terms of the amnesty proclamation, nobody or few would assume the risk of submitting their cases to the Amnesty Commission.

With respect to the objection that inasmuch as the decision of the court martial convicting Crisologo of murder has not yet become final, he may not invoke the benefits of amnesty, we believe that amnesty may be invoked at any stage of the criminal proceedings—before trial, during trial, after conviction and pending appeal. Administrative Order No. 11 implementing Amnesty Proclamation No. 8 and creating 14 Guerrilla Amnesty Commissions provides for the consideration by the Seventh Guerrilla Amnesty Commission of cases already decided by the courts of first instance but not yet elevated on appeal. Department Order No. 20, dated December 24, 1946, issued by the Secretary of National Defense pursuant to the powers vested in him under Administrative Order No. 17 of President Roxas, provides for the consideration by the Amnesty Commission of the Armed Forces of the Philippines, one of the respondents in this case, of all court martial cases (like the present case) pending review under the Articles of War. In other words, both Administrative Order No. 11 and Department Order No. 20 both implementing Amnesty Proclamation No. 8, contemplated the consideration by an Amnesty Commission, of cases not yet final, decided either by the civil courts or by the courts martial. We therefore find that respondent Crisologo is perfectly warranted in invoking the benefits of amnesty even though his case is still pending review by higher authorities.

But the most important question involved in the present case is whether or not respondent Crisologo who, at the time he was said to have ordered the killing of the eight deceased, was a member of the regular army and not a member of the guerrilla forces, is entitled to the benefits

of Amnesty Proclamation No. 8. The doubt is, possibly, engendered not only by Proclamation No. 8 itself but also by the message of President Roxas to Congress urging its concurrence in the amnesty. The President in his message to Congress, spoke of his grave concern regarding the large number of members of guerrilla and other resistance organizations who were being prosecuted before the courts for alleged acts of murder, assaults, etc. committed during the period of occupation by the Japanese forces. In Amnesty Proclamation No. 8 itself, the first three paragraphs of its preamble speak of volunteer armed forces of Filipinos and other nationalities operating as guerrillas in furtherance of the resistance movement against the enemy, and the second and third paragraphs of the body of the proclamation speak of the establishment and functions of Guerrilla Amnesty Commissions. Administrative Order No. 11 created fourteen Guerrilla Amnesty Commissions. From all this, it is claimed that the intention of the President in issuing his amnesty proclamation was to confine its benefits only to members of guerrilla forces and to exclude therefrom those who were in the regular Armed Forces.

We cannot agree to this contention. It would be too narrow a view of the proclamation and the desire and intention inspiring it. We see no reason why the benefits of the amnesty should be confined to a certain portion of the population that heroically operated and fought against the enemy to the exclusion of another portion which because of its discipline, training and equipment, may have equally fought and operated, perhaps even more effectively, tho for a shorter period of time, against the enemy. We are inclined to believe that the reason the guerrilla forces were particularly and (seemingly) exclusively mentioned in the presidential message as well as in the proclamation itself, including the denomination of the Amnesty Commission as "Guerrilla" Amnesty Commissions is that by far, the great majority of people who resisted the enemy and in every corner of the Philippines, and in the course of said resistance may have committed acts penalized by the Revised Penal Code were members of the guerrilla forces. Before the occupation of the Philippines by Japan at the beginning of 1942, there could not have been any case or at least not many cases to be covered by an amnesty like that contained in Proclamation No. 8. At that time there could have been but few if any enemy spies or fifth columnists, and if caught, they were dealt with and tried by the civil courts or by courts martial. It was only after the occupation of the Islands when some of its inhabitants may have had occasion or temptation to identify themselves with the enemy or otherwise aid it in its war against us, and because of such treasonable activi-

ties, were eliminated or otherwise punished by our regular armed forces and by members of the resistance movement, that acts and offenses subject to amnesty could have been committed. It will be remembered that the resistance by the regular Armed Forces (USAFFE) after the invasion was not of long duration. After the fall of Bataan and Corregidor in April and May, 1942, all organized resistance against the enemy practically ceased. The unit of the Zamboanga Sector (USAFFE) to which Crisologo belonged surrendered to the Japanese on May 14, 1942, in obedience to orders of General Sharp, Commanding General of the USAFEE forces in Mindanao. So that, resistance by the regular armed forces against the enemy was relatively short-lived. On the other hand, after the invasion and after the surrender of the regular armed forces, many patriotic Filipinos and other nationalities, including members of the regular armed forces after their release from the concentration camps, began to operate as guerrillas on a more or less extensive scale, and in all the provinces to further the resistance movement up to Liberation. It was therefore natural that the President should have concentrated on these guerrillas in his message to Congress and also in his amnesty proclamation itself. But there was no reason for him to exclude and we now see no reason for us to exclude from the benefits of the amnesty, other persons who fought against and resisted the enemy and in the course of said fight and resistance committed acts and offenses covered by the amnesty.

Moreover, the mention of the guerrillas and similar forces in Proclamation No. 8 is confined to the preamble. The preamble is not exactly an essential part of an act or proclamation. It is an introductory or preparatory clause, explanatory of the reasons for the enactment, usually introduced by the word "whereas." Corpus Juris says:

"Legislature may have had in view a particular mischief, which is recited in the preamble, and to prevent which was the immediate and principal object of the statute, but may then, in the body of the act, provide a remedy for general mischiefs of the same nature. *Holbrook vs. Holbrook*, 1 Pick (Mass.). 248; *Proprietors School Fund's Appeal*, 2 Walk. (Pa.), 37; *Mace vs. Cammel*, Lofft 783, 98 Reprint 917; *Colohan vs. Cooke*, Willes 393." (59 C. J., 1005, footnote 93 [b].)

On the other hand, the title of Proclamation No. 8—Granting Amnesty to *all Persons* who Committed Acts Penalized under the Revised Penal Code in Furtherance of the Resistance to the Enemy—says that it is available to *all persons*. So does the first paragraph of the enacting clause itself—

"Now, THEREFORE, I, Manuel Roxas, President of the Philippines, in accordance with the provisions of Article VII, section 10, Paragraph 6 of the Constitution, do hereby declare and proclaim an

amnesty *in favor of all persons* who committed any act penalized under the Revised Penal Code in furtherance of resistance to the enemy or against persons aiding in the war efforts against the enemy, and committed during the period from December 8, 1941 to the date when each particular area of the Philippines was actually liberated from enemy control and occupation. This amnesty shall not apply to crimes against chastity or to acts committed from purely personal motives." (Italics in both quotations are ours.)

Furthermore, the exception contained in the last sentence of the paragraph just quoted makes no mention or reference to members of the regular Armed Forces (USAFFE) like respondent Crisologo. Had it been the intention of the President to exclude from the benefits of the amnesty, members of the Armed Forces (USAFFE), the easiest and most effective way of carrying out and accomplishing such an intention would have been to include them in the exception contained in the last sentence of said enacting clause. But this was not done. Besides, as was decided by this court in the case of *People vs. Gajo*, L-2012, 46 Off. Gaz., 6093 interpreting the meaning and scope of this same Amnesty Proclamation No. 8, any reasonable doubt as to whether a given case falls within the proclamation shall be resolved in favor of the accused (Administrative Order No. 11, 40 Off. Gaz., 2360).

Lastly, it would be quite unfair and unjust to exclude from the benefits of the amnesty proclamation those who not only through patriotic motives but because of their membership in the armed forces were called upon and were obliged to resist the enemy may have had occasion to commit acts and offenses penalized by the Revised Penal Code and who now invoke the benefits of the amnesty proclamation. We are not convinced that the President who issued the proclamation and the members of Congress who concurred in it intended and contemplated such exclusion.

In view of the foregoing, we find that respondent Amnesty Commission has jurisdiction to entertain, hear and decide the petition filed before it by respondent Crisologo. Petition for prohibition denied. There is no pronouncement as to costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Reyes, and Torres, JJ., concur.

TUASON, J., dissenting:

The petition for prohibition should, in my judgment, be sustained.

The preamble to Proclamation No. 8 reads: "Granting Amnesty to all Persons who Committed Acts Penalized under the Revised Penal Code in Furtherance of the Resistance to the Enemy." The first "Whereas" of the proclamation speaks of "members of such (guerrilla) forces"

who "committed acts penalized under the Revised Penal Code." The second introductory consideration was the fact that "charges have been presented in the courts" for "such acts." The third was the fact that the patriotic purpose which prompted the commission of the acts "is not a valid defense under the laws of the Philippines." These "Whereases" constitute the basis of, and are confirmed by, the declaration that follows them. Thus, in the first paragraph of the dispositive part, the proclamation grants "an amnesty in favor of all persons who committed any act penalized under the Revised Penal Code," while the next succeeding paragraph provides for the appointment of amnesty commissions, "to determine who among those against whom charges have been filed before the courts of the Philippines or against whom charges may be filed in the future" are entitled to the grant.

These provisions, construed singly or in conjunction with the whole text, clearly demonstrate that the proclamation envisages crimes (1) penalized under the Revised Penal Code or the laws of the Philippines (2) for which charges have been filed or may be filed in the courts.

Now, offenses committed by members of the Armed Forces and triable by courts-martial, whether committed against the enemy, the enemy's collaborators, or friendly citizens, are not crimes under the Revised Penal Code or under the general laws. Courts-martial take cognizance only of violations of the Articles of War. Captain Crisologo has been or is being tried for violation of section 92 of said Articles of War. The fact that the offense of which he was or is accused happens to be punished under the Revised Penal Code does not make it an offense under that Code.

As to the meaning of courts, it should be noted that courts-martial do not come within the definition of the term. Courts-martial are agencies of executive character. (Winthrop's Military Law and Precedents, 2d ed., p. 49; *Ruffy vs Chief of Staff*, PA, L-533, 43 Off. Gaz., 855.) "The distinction between courts-martial and the courts which pertain to the judicial branches of the state and the Federal Governments has long been recognized. While courts-martial may and do discharge judicial functions, and are therefore in a certain sense courts, they are not a part of the judiciary department of the government, and are more properly classed as an executive agency belonging to the executive branch of the government. The power of Congress to provide for the trial and punishment of military and naval offenses in the manner practiced by civilized nations is given without any connection between it and the third article of the Constitution defining the judicial power of the United States; indeed, the two powers are entirely independent of each other." (36 Am. Jur., p. 244.)

And it was natural that persons who committed offenses triable and punishable under the Articles of War should be excluded from the benefits of the amnesty proclamation. Officers and men of the armed forces are subject to rigid discipline which is said to be the life-blood of an army. While common crimes committed by men not amenable to military law may be condoned in a sweeping legislation as a matter of policy, the same can not be done with respect to violations of military laws without seriously jeopardizing military morale so essential to an efficient army.

Moreover, cases of the latter kind can be dealt with directly by the Chief Executive as Commander in Chief of the Armed Forces, before or after prosecution is instituted. It is the President who convenes courts-martial, directly or through commanding officers. He has complete control over these prosecutions; he has power to determine what offenses should be tried and to review the decisions of the military courts. A little reflection will show that there was no need for extending amnesty to members of the armed forces for offenses for which they should be prosecuted before military courts.

The second paragraph of the dispositive part of the proclamation provides for the appointment of amnesty commissions "simultaneously to be established." Further, such commissions were accordingly organized under Administrative Order No. 11 dated October 2, 1946. These commissions were to deal with cases pending in the courts or which might be filed in the courts in the future. Being contemporaneous with the promulgation and approval of Proclamation No. 8, that Executive Order may be said to reflect the real intent and meaning of the proclamation.

It was on November 15, 1946, that Administrative Order No. 17 was promulgated creating an amnesty commission known as Philippine Army Amnesty Commission, to take cognizance of all cases of persons subject to military law and falling within the terms of Amnesty Proclamation No. 8. For the reasons above stated, this administrative order enlarges, in my opinion, the scope of Amnesty Proclamation No. 8 and is invalid in so far as it undertakes to embrace cases not contemplated in that proclamation. The granting of amnesty is not the exclusive prerogative of the President. Under the Constitution it has to have the concurrence of the Congress, and Amnesty Proclamation No. 8 needed the approval of Congress before it went into effect.

From what has been said, I do not believe the words "all persons" used in the preamble and in the body of the proclamation were conceived to apply to members of the armed forces. Furthermore, there is warrant in the text for the idea that "all persons" was used because there were not only persons who "operated as guerrillas" and who formed the bulk of the intended beneficiaries, but

also "other patriotic individuals and groups" who did not belong to organized underground movements or were not guerrillas at all.

Petition denied.

[No. L-2548. January 28, 1950]

DEE C. CHUAN & SONS, INC., petitioner and appellant, *vs.*
THE COURT OF INDUSTRIAL RELATIONS, CONGRESS OF
LABOR ORGANIZATIONS, KAISAHAN NG MANGGAGAWA
SA KAHAY SA PILIPINAS, and JULIAN LUMANOG AND
HIS WORK-CONTRACT LABORERS, respondents and
appellees.

EMPLOYERS AND EMPLOYEES; CLAIM FOR DAMAGES RESULTING FROM
LABORERS' STRIKE.—A strike is not in itself inconsistent with
or destructive of the efficacy of an award or decision, since
the Court of Industrial Relations in proper cases may enforce
the same during the statutory period. In other words,
an employer, as soon as the laborers walk out, may resort
to said court and defeat the aims of the strike by alleging
the existence of a binding decision settling a previous similar
industrial dispute, subject of course to the power of the court
to reopen any question involved therein (sec. 17, Commonwealth
Act No. 103). As a matter of fact, a strike may
not be staged only when, during the pendency of an industrial
dispute, the Court of Industrial Relations has issued the
proper injunction against the laborers (sec. 19, Commonwealth
Act No. 103, as amended). Capital need not, however, be apprehensive
about the recurrence of strikes in view of the system
of compulsory arbitration by the Court of Industrial
Relations. This conclusion on the basic phase of the case,—that
the strike in question is legal and justified,—is necessarily fatal
(1) to petitioner's claim for damages, even assuming that
the Court of Industrial Relations has jurisdiction to pass
thereon, and (2) to petitioner's claim that the striking laborers
had ceased to be in its employ as a consequence of their
unjustified strike.

PETITION to review on certiorari a decision of the Court
of Industrial Relations.

The facts are stated in the opinion of the court.

Quisumbing, Sycip & Quisumbing for petitioner.

Lazatin & Caballero for respondents.

PARÁS, J.:

This is an appeal by the petitioner from a decision of
the Court of Industrial Relations ordering the petitioner
(1) to grant an increase of ₱0.30 a day to all its employees
and laborers except workers under the "pakiaio system";
(2) to grant its laborers, under certain conditions,
15 days vacation leave and 15 days sick leave both with
full pay every year, and, upon the other hand, denying
(a) petitioner's prayer for the reduction of the salaries

and wages of its employees and laborers, including the work-contract laborers of Julian Lumanog; (b) petitioner's claim for damages resulting from its laborers' strike; (c) petitioner's prayer for the filing of a bond by Julian Lumanog under Act No. 3959 and for the reduction of wages of his work-contract laborers.

The contention of the petitioner that the strike declared by its laborers on April 12, 1947, is illegal or unjustified because it originated from unfounded demands and was planned by the Congress of Labor Organizations to create a general strike condition in Manila and embarrass the Roxas Administration, raises questions of fact decided adversely to the petitioner by the Court of Industrial Relations; and, it is now needless to state, we are not authorized to re-examine the same.

It appears that there was a previous industrial dispute between the petitioner and its laborers resulting in a strike which was decided and settled by the Court of Industrial Relations in a final judgment promulgated on November 23, 1946. It is presently argued by the petitioner that the effective duration of this judgment is three years during which a strike may not be staged. Section 17 of Commonwealth Act No. 103, invoked by the petitioner, provides that "An award, order, or decision of the Court shall be valid and effective during the time therein specified. In the absence of such specification, any party or both parties to a controversy may terminate the effectiveness of an award, order or decision after three years have elapsed from the date of said award, order or decision by giving notice to that effect to the Court: *Provided, however,* That at any time during the effectiveness of an award, order or decision, the Court may, on application of an interested party, and after due hearing, alter, modify in whole or in part, or set aside any such award, order or decision, or reopen any question involved therein."

The petitioner admits that this provision does not expressly prohibit the declaration of a strike during the effective duration of an award or decision, but contends that the prohibition may be inferred from the legislative intent of forestalling strikes. We cannot agree. A strike is not in itself inconsistent with or destructive of the efficacy of an award or decision, since the Court of Industrial Relations in proper cases may enforce the same during the statutory period. In other words, an employer as soon as the laborers walk out, may resort to said court and defeat the aims of the strike by alleging the existence of a binding decision settling a previous similar industrial dispute, subject of course to the power of the court to reopen any question involved therein (sec.

17, Commonwealth Act No. 103). As a matter of fact, a strike may not be staged only when, during the pendency of an industrial dispute, the Court of Industrial Relations has issued the proper injunction against the laborers (section 19, Commonwealth Act No. 103, as amended). Capital need not, however, be apprehensive about the recurrence of strikes in view of the system of compulsory arbitration by the Court of Industrial Relations.

This conclusion on the basic phase of the case,—that the strike in question is legal and justified,—is necessarily fatal (1) to petitioner's claim for damages, even assuming that the Court of Industrial Relations has jurisdiction to pass thereon, and (2) to petitioner's claim that the striking laborers had ceased to be in its employ as a consequence of their unjustified strike.

The raise in wages and the 15-day vacation leave with full pay every year conceded to the workers by the Court of Industrial Relations were based on the financial ability of the petitioner as shown by the evidence adduced before and weighed by said court, and for us to review this feature of the case will involve a factual inquiry which we are not empowered to undertake.

The Court of Industrial Relations has also ordered the petitioner to grant its workers 15-day sick leave with full pay every year. In the case of *Leyte Land Transportation Company, Inc. vs. Leyte Farmers' and Laborers' Union*, L-1377, decided on May 12, 1948 (45 Off. Gaz., 4862) we already sustained the authority of the Court of Industrial Relations to grant vacation and sick leaves with pay, and observed that "when there is an assurance of holidays and vacations, workers take up their tasks with greater efficiency and tend to sustain their productiveness for longer periods."

The claims of the petitioner against Julian Lumanog must also be overruled, first, because it is admitted that the latter is an independent contractor, and his laborers (who joined the strike) are therefore not in the service of the petitioner, with the result that the Court of Industrial Relations has no jurisdiction over them; and, secondly, because we have ruled that the strike in question is legal and justified, and cannot consequently be a cause for discharge.

The appealed decision of the Court of Industrial Relations is therefore affirmed, and it is so ordered with costs against the petitioner.

Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Moran, C. J., concurs in the result.

Decision affirmed.

[No. L-2811. January 28, 1950]

PRESCILA S. EBOÑA, EULALIA CABANELA, EUSEBIA CABANELA, ELEUTERIO CABANELA, NIEVES ESPINOSA, PANTALEONA C. TOTANES, RICARDO CABANELA, PETRA ABANES, ADELA VASQUEZ and AGAPITA ARBOLEDA, plaintiffs and appellants, *vs.* THE MUNICIPALITY OF DAET, defendant and appellee.

1. MUNICIPAL CORPORATIONS; ORDINANCE FOR ZONIFICATION OF PUBLIC MARKET, CONSTITUTIONALITY OF.—A municipal ordinance prescribing the zonification and classification of merchandise and foodstuff sold in the public market, is valid and constitutional, because under the general welfare clause contained in section 2238 of the Revised Administrative Code, the municipal council is empowered to “enact ordinances and make regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein.
2. ID.; ID.—When the municipality administers the market, it has the authority to regulate the use thereof and may distribute and award the spaces therein to be occupied by stores and stalls under conditions and regulations it may impose.

APPEAL from a judgment of the Court of First Instance of Camarines Norte. Abaño, J.

The facts are stated in the opinion of the court.

Generoso F. Obusan for appellants.

Provincial Fiscal Valentin Reyes for appellee.

TORRES, J.:

The municipal council of Daet, Province of Camarines Norte, passed Municipal Ordinance No. 7, which was duly approved by the provincial board on June 12, 1948, “prescribing the zonification of the public markets, and rules and regulations with regards to the rights to occupy space in the market buildings, and penalties therefor.” The pertinent portions of said ordinance are as follows:

“SEC. 2. All occupants in the buildings publicly known as market proper, should observe strictly the regulations with regards to the zonification in the following manner:

“Zone 1. Market Building No. 1.—Opposite Market Tiendas block A and B will be designated to all merchants or dealers of dry goods and general merchandise;

“Zone 2. Market Building No. 2.—Opposite Market Tiendas block C and D will be designated to all merchants dealing in ‘Cafeterias’, ‘Carenderias’ and ‘Sari-sari’; and

“Zone 3. Market Building No. 3.—New Market Building will be designated to all merchants of dry and fresh fishes, meat and vegetable vendors.

“SEC. 3. It is hereby prohibited for any merchants or dealers in goods to sell his goods and wares in the zone not allocated for the purpose as regulated above.”

It appears that prior to the passage of said Municipal Ordinance No. 7 and the approval of Resolution No. 104 of the municipal council of Daet, the public market of the municipality consisted only of two buildings designated as Nos. 1 and 2. A third building known as building No. 3 having been completed, the municipal council passed the ordinance in question and by said Resolution No. 104 decided to enforce the provisions of said ordinance by requiring the merchants and vendors occupying the places in Buildings Nos. 1 and 2 to transfer their places of business in accordance with the classification provided for in section 2 of the ordinance, so that "dealers or merchants of dry goods and general merchandise" shall be located in Zone 1 (Building No. 1); "merchants operating *cafeterias*, *carenderias* and *sari-sari*" are assigned to Zone 2 or Market Building No. 2; and merchants dealing in "dry and fresh fishes, meat and vegetables" shall operate their place of business in Zone 3, known as Market Building No. 3. The above-quoted section 3 of the ordinance expressly prohibits "any merchant or dealer in goods to sell his goods and wares in the zone not allocated for the purpose as regulated above."

Prior to the completion of Building No. 3 and the passage in 1948 of Municipal Ordinance No. 7, the petitioners, engaged in the business of *carenderia* and *cafeteria*, were located in Building No. 1, and they contend that Municipal Ordinance No. 7 which required and compelled them to transfer to another building, is unconstitutional, illegal, null and void, because it is unjust, discriminatory, unreasonable and confiscatory in so far as it refers to the plaintiffs and their business in the market stalls occupied by them in Market Building No. 1 of the municipality of Daet. They filed a complaint against the municipality of Daet, praying that said Ordinance No. 7 be declared unconstitutional, illegal, null and void, and that, pending the determination of this case, a writ of preliminary injunction be issued against the defendant, its instrumentalities, agents, officers and representatives, enjoining them from evicting, removing or throwing out the plaintiffs from their market stalls in Market Building No. 1 of Daet, and that after trial the said injunction be made permanent.

After hearing, the Court of First Instance of Camarines Norte upheld the constitutionality and legality of the ordinance in question and declared that the municipal council of Daet, being empowered to enact said ordinance and the same having been enacted for the good of the public, the same is *not* null, void and unconstitutional and much less discriminatory, unjust, unreasonable and confiscatory as contended by the petitioners. The court, therefore, dismissed the complaint without pronouncement as to costs.

In this appeal, the plaintiffs-appellants, besides assailing the constitutionality and legality of the ordinance, contend that the court should have found that the plaintiffs are entitled to continue in the occupancy of their stalls in the market of Daet in accordance with Republic Act No. 37 and should have perpetually enjoined the defendant, its officers and representatives, from evicting and throwing them out from their market stalls in Building No. 1.

There is no dispute as to the facts. It has been established at the hearing that these appellants were occupants of stalls in Building No. 1 of the market of the municipality of Daet, and were engaged in the business of conducting *cafeterias* and *carenderias* prior to the passage of Resolution No. 104, series of 1948, whereby the municipal council of Daet seeks to enforce the provisions of Municipal Ordinance No. 7.

With reference to the contention of appellants that Republic Act No. 37 is applicable to them, our perusal thereof shows that it can not be of any help to their case, because said act has for its purpose the "granting preference to Filipino citizens in the lease of public market stalls." In the case at bar, the issue of the nationality of the stallholders has not been raised by appellants, is not at all mentioned in the provisions of Ordinance No. 7 and Resolution No. 104 of the municipal council of Daet, and under the provisions of said ordinance the appellants are not divested of the possession of their stalls in the market.

Regarding the alleged unconstitutionality and illegality, etc., of the ordinance in question, upon close scrutiny of its provisions, its wording and its purpose, we find nothing that would support the contentions of appellants. They can not deny that under the general welfare clause contained in section 2238 of the Revised Administrative Code, the municipal council of Daet is empowered to "*enact ordinances and make regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein.*"

We find that Ordinance No. 7, provides for the good, comfort and convenience of the public and the market vendors as well. By the zonification and classification provided for by its provisions, the public, the consumers, can easily locate the place where they can find the particular goods or commodities they want to buy. Even the merchants and vendors occupying the stalls are likewise benefited by the zonification and classification provided for in

the ordinance, in that they will be placed where they should belong, instead of being mingled in the same building with vendors or merchants dealing in goods or merchandise or foodstuffs which are not akin with the class of merchandise or goods in which they are dealing. To be sure, these appellants who according to the petition, are dealing in *cafeterias* and *carenderias*, and consequently their customers, will not feel happy to be among fish vendors or the like.

That the act performed by the municipality of Daet in enacting Municipal Ordinance No. 7, is entirely within the power of the municipal corporation, is decided by this Court in various similar cases (*Seng Kee & Co. vs. Earnshaw*, 56 Phil., 204). In *U. S. vs. Salaveria* (39 Phil., 102), which holds that the presumption is all in favor of the validity of the ordinance, this Court held that:

"Although such regulation often interferes with an owner's desire as to the use of his property and hamper his freedom in regard to it, they have generally been sustained as valid exercises of the police power, provided that there is nothing arbitrary or unreasonable in the laying out of the zones, and that no uncontrolled discretion is vested in an officer as to the grant or refusal of building permits.

"Not only the State effectuate its purposes through the exercise of the police power, but the municipalities does also. Like the State, the police power of a municipal corporation extends to all matters affecting the peace, order, health, morals, convenience, comforts, and safety of its citizens—the security of social order—the best and highest interests of the municipality. The best considered decisions have tended to broaden the scope of action of the municipality in dealing with police offenses. The public welfare is rightly made the basis of construction."

Moreover, in a recent decision promulgated in the case of *Lorenzo and Estrella vs. Municipal Council of Naic, Cavite and Dinio* (G. R. No. L-2652, Dec. 7, 1949), which affirms the judgment of the Court of First Instance of Cavite, which dismissed the complaint of the appellants against the municipal council of Naic, we held that the lower court did not err in finding against the appellants because when the municipality administers the market, it has the authority to regulate the use thereof and may distribute and award the spaces therein to be occupied by stores and stalls under conditions and regulations it may impose.

Premised on all the foregoing, and finding no errors committed by the lower court in the disposition of the case under consideration, the judgment appealed from is affirmed. Appellants shall pay the costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment affirmed.

[No. L-3282. January 28, 1950]

VICTORINA A. DE GAERLAN and SALVADOR GAERLAN, petitioners, *vs.* FELIX MARTINEZ, Judge of First Instance of Manila, JULIANA R. DE SANTOS, and SIMPLICIO SANTOS, respondents.

1. EJECTMENT; REQUIREMENT OF DEPOSIT OF RENTALS PENDING APPEAL; EFFECT ON QUESTION OF LANDLORD'S TITLE PENDING IN ANOTHER CASE.—The requirement of the deposit of rentals during the pendency of an appeal in an ejectment case could not be affected by the fact that the ownership of the landlord on the leased premises is pending final determination in another case.
2. *Id.*; TENANTS ARE ESTOPPED TO DENY LANDLORD'S TITLE.—Tenants are estopped from denying the title of their landlord once the relationship of landlord and tenant is established.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Ernesto Quirino, Ezpeleta, Erfe & Ezpeleta and *Jesus Ocampo* for petitioners.

Jose W. Diokno and *Celestino de Dios* for respondents.

OZAETA, J.:

On August 23, 1941, Juliana R. de Santos purchased at public auction from the Bureau of Lands a lot of 120.9 square meters located on Barbosa street, Quiapo, Manila, which was patrimonial property of the Commonwealth of the Philippines, for the sum of ₱15,112.50, paying then and there the sum of ₱1,511.25 and obligating herself to pay the balance in not more than ten equal annual installments. The balance was fully paid on August 1, 1944. One of the conditions of the sale was that the buyer should commence the construction of improvements appropriate for the purpose for which the land was purchased within six months and should complete said construction within eighteen months from the date of the sale. Because of the war the buyer was unable to comply with that condition; and after the liberation the city authorities would not approve her application for a permit to construct a permanent improvement on the land pending approval of a plan for the beautification of Manila. In view of these reasons, upon recommendation of the Director of Lands, the Secretary of Agriculture and Natural Resources, on March 17, 1948, allowed the buyer "to commence the construction of her building on the said lot within six months from the date that the city authorities will permit the construction of a permanent building on the land and to finish the same within eighteen months from the same date of the permit."

In the meantime, and in March, 1945, the buyer Juliana R. de Santos leased the lot in question to the herein peti-

tioners Victorina A. de Gaerlan and Salvador Gaerlan, who constructed a building thereon and who paid her a rent of ₱20 a month up to August, 1945; ₱40 a month from September to November, 1945; ₱100 a month for December, 1945, and January, 1946; and ₱150 a month from February, 1946.

In September, 1947, the herein respondents Juliana R. de Santos and Simplicio Santos commenced an action of *desahucio* in the municipal court of Manila against the herein petitioners Victorina A. de Gaerlan and Salvador Gaerlan, alleging among others the following:

"7. That sometime in December, 1946, and for the purpose of advising the said defendants to vacate the land because she needs the same, the plaintiff went to the premises and then and there discovered the reason the defendants have repeatedly, spontaneously and voluntarily increased the rents was that instead of the makeshift shelter (barong-barong) which she permitted them to construct, they have erected thereon a building of strong materials, consisting of four doors;

"8. That in view of the open violation made by the defendants of their undertaking when they received the lot from the plaintiff Juliana R. de Santos, and because she needs the premises for her own use, she then advised them to vacate and surrender the same to her, but that said defendants requested the plaintiff to permit them until April, 1947, to continue occupying the premises and thereby be enabled to recover the capital they have invested in constructing the said building; and the plaintiff, acceding to said request, did in fact permit them to hold the land until said month of April, 1947, upon the expressed condition that if they did not then vacate the premises, they shall be liable to the plaintiff for all damages that she might suffer by reason of their failure to disoccupy the same;"

On February 5, 1948, the municipal court rendered judgment ordering the defendants to vacate the premises in question and to pay the plaintiffs ₱150 a month until said premises are completely vacated.

At the instance of the herein petitioners (defendants below) the Secretary of Agriculture and Natural Resources revoked his order of March 17, 1948, canceled the sale of the lot in question to Juliana R. de Santos, and declared the forfeiture of the purchase price paid by her for said lot, at the same time ordering that said lot be again sold at public auction and that pending the oral public bidding Victorina A. de Gaerlan be required by the Director of Lands to pay the necessary occupation fee for occupying and utilizing the land in question. The validity of said order is the subject of a separate litigation now pending in the Court of First Instance of Manila.

During the pendency of the *desahucio* case on appeal in the Court of First Instance of Manila, the herein petitioners made two unsuccessful attempts before two different judges to be exempted from depositing the rent in court on the ground that by virtue of the order last above mentioned of the Secretary of Agriculture and Natural

Resources the plaintiffs were no longer the owners of said land.

The present incident arose out of the third attempt of the petitioners to secure such an order from the respondent judge, Honorable Felix Martinez, who on November 20, 1948, entered an order relieving the petitioners from the obligation to deposit the monthly rentals provided they filed a bond of ₱1,800. When such bond was presented for approval, the respondents opposed it and moved for the reconsideration of the order of the respondent judge of November 20, 1948.

On August 1, 1949, the respondent judge entered an order giving the defendants three days within which to deposit the accrued rentals in lieu of the bond, otherwise writ of execution would be issued.

On August 6, 1949, the petitioners moved to reconsider the order last above mentioned, but during the hearing of the motion counsel for the petitioners prayed in the alternative for an extension of ten days to comply with the order, which extension was granted by the respondent judge in an order dated August 13, 1949, which reads as follows:

"A petición del abogado Sr. Jesus Ocampo, se le concede otro plazo de diez (10) días a contar desde esta fecha para que deposite todos los alquileres vencidos y por vencer; de otro modo se ordenará la ejecución."

On August 23, 1949, counsel for the petitioners filed a motion asking for an additional extension of twenty days from August 23 "within which to deposit all the accrued rentals with the Clerk of this Honorable Court." On August 28 the respondent judge granted said petition in an order which reads as follows:

"A petición del abogado Sr. Jesus Ocampo, y sin objeción del abogado Diokno, se le concede un plazo adicional de quince (15) días a contar desde esta fecha para cumplir con la orden de este Juzgado de fecha 13 de los corrientes."

The petitioners now ask for the annulment of the above-mentioned orders of the respondent judge on the ground that Rule 72, requiring the deposit of the rentals in court during the pendency of an appeal in a *desahucio* case, is not applicable because "plaintiffs' title has been cancelled and the property reverted to the ownership of the Government."

We find the petition for certiorari to be completely devoid of merit for the following reasons:

The order of the Secretary of Agriculture and Natural Resources canceling the sale of the lot in question and ordering the forfeiture of the purchase price is not yet final, it being contested by the purchaser in civil case No. 7336 of the Court of First Instance of Manila, which has not yet been decided.

The petitioners as tenants of the respondent Juliana R. de Santos are estopped from denying the title of their landlord at the time of the commencement of the relation of landlord and tenant between them. (Rule 123, sec. 68, paragraph [b].) Moreover, the orders complained of were issued by the respondent judge not only with the consent but upon petition of the petitioners themselves.

Wherefore, the petition is denied, with costs against the petitioners, and the writ of preliminary injunction issued herein on September 9, 1949, is hereby dissolved.

Moran, C. J., Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Petition denied.

[No. L-1559. January 31, 1950]

FILIPINAS COMPAÑIA DE SEGUROS, petitioner, *vs.* TAN CHUA-CO, respondent

APPEAL; COURT OF APPEALS, CONCLUSIVENESS OF FINDINGS OF FACT OF.—The findings of the Court of Appeals (1) that the sealing of, and the placing of posters on, the building by the Japanese forces did not increase the hazard or risk to which the building was exposed and, therefore, the insurance did not cease to attach under article 8 of the policies; and (2) that the fire which destroyed the building “was purely an ordinary and accidental one, unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom,” are binding and conclusive upon the Supreme Court.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Ramirez & Ortigas for petitioner.

Quisumbing, Sycip & Quisumbing for respondent.

PADILLA, J.:

This is a petition for a writ of *certiorari* to review a judgment of the Court of Appeals.

The petitioner is a domestic insurance corporation licensed to engage in the insurance business in the Philippines. The respondent is the owner of a building located in the municipality of Lucena, province of Tayabas, insured for ₱20,000 and ₱10,000 in two policies issued by the petitioner.

On 5 January 1942, during the term of the policies just referred to, the building insured was burned and completely destroyed. Notice and proof of loss had been duly made, but as the petitioner refused to pay, an action was brought to recover on the policies. After trial, judgment was rendered against the petitioner for the amount of the two policies with legal interest from the date of the filing of the complaint. The Court of Appeals affirmed the judgment.

Now, the petitioner raises in these proceedings three questions (1) that, under article 8 which provides:

Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy, by or on behalf of the Company.

(a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by fire.

"the sealing of respondent's property by Japanese forces on December 28, 1941 changed the nature of the occupation thereof in a manner which increased the risk of loss, and that in accordance with the provisions of article 8 of the policies above quoted, the insurance ceased to attach as of the aforesaid date of December 28, 1941;" (2) that under article 6 of the insurance policies issued "the inferential finding that the fire of January 5, 1942 was of accidental origin, *without more*, could not make respondent's loss compensable, considering that the contract of the parties specifically required respondent to prove that loss happened independently of the abnormal conditions before he could recover. In other words, that a consuming fire was accidental is not proof of the fact that such fire was not the remote or indirect result of, or contributed to, by the abnormal conditions;" and (3) that, under article 13 of the insurance policies which provides:

All benefits under this policy shall be forfeited:

(a) If the claim be in any respect fraudulent;
(b) If any false declaration be made or used in support thereof;
(c) If any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this policy;

(d) If the loss or damage be occasioned by the wilful act, or with the connivance of the Insured;

(e) If the insured or anyone acting on his behalf shall hinder or obstruct the Company in doing any of the acts referred to in Article 1;

(f) If the claim be made and rejected and an action or suit be not commenced within twelve months after such rejection, or (in case of an Arbitration taking place in pursuance of Article 18 of this Policy) within twelve months after the Arbitrator or Arbitrators or Umpire shall have made their award,

the respondent cannot recover, because he had made fraudulent declaration in his claim submitted to the petitioner denying that there had been a previous fire in the premises in which the insured was interested, whereas at the trial he admitted that there had been a previous fire in which he was an interested party.

As to the first question, the Court of Appeals held:

As to the claim of the appellant that risk of fire or loss was increased by the sealing of the building by the Japanese Forces, the evidence of record discloses the following: The Japanese Army

entered Lucena at 5:30 a.m., on December 27, 1941. At that time appellee's building was closed. On December 28, according to the testimony of the principal witness for the defendant, all the stores along Quezon Avenue, including the stores in the building of the appellee, were sealed by the Japanese Army, except those which were open (t. s. n., p. 50). Japanese soldiers asked what were contained in the stores, and, upon being informed, they ordered the placing of posters prohibiting the taking away of materials from the said stores under penalty of death (Id.). There were no disorders during this period of time, that is, between the entry of the Japanese Army and the burning of the building. Looting was rampant until the end of December, but thereafter and up to the date of the burning of the building, only sporadic looting occurred in far away places. The Japanese soldiers patrolled the streets and dispersed people seen in groups. They also arrested and tied and punished people caught looting or stealing.

The appellant and the *amici curiae* contend that the risk of fire or loss, to which the building was exposed by the sealing thereof, was considerably increased, and that the policies thereupon ceased to attach; that the situation of the building insured was changed in that it became a building containing war materials, which it became the bounden duty of all loyal forces, whether the regular USAFFE or the guerrilla elements to destroy; that said sealing converted it into a veritable arsenal of war materials, thereby increasing the risk and hazard to which it was exposed. In passing upon this defense, the trial court ruled that the stipulation between the parties that no encounter of troops occurred in Lucena before or after its occupation, and that the forces of one and the other side were localized around the fortifications of Bataan and Corregidor, had the effect of bringing the said municipality beyond the zone of war operations at the time in question, for which reason no increase resulted in the risk or hazard to which the building insured was subjected to. Incidentally, it found that the stores in the building insured were sealed, not because they belonged to enemy nationals, but because they were abandoned by the owners and precautionary measures had to be adopted to prevent their being looted.

We find that the finding of the trial court as to the cause of the sealing of the building is fully justified by the evidence of record. If the Japanese forces only sealed those buildings which were closed, and not those which were open (t.s.n., p. 50), it is evident that their reason for the sealing was because they were closed, and they desired to prevent looting by the sealing.

As regards the supposed increase in the risk, we may state that there were only three possible sources of danger to which the building insured could have been exposed before it was burned on January 5, 1942, namely, by action of USAFFE, guerrilla, or civilian saboteurs. This is a well known fact and the parties have stipulated that at the beginning of the year 1942 the theater of operations between the Japanese Army and the USAFFE forces was shifted to the fortifications around Bataan and Corregidor. There could not have been any danger from the USAFFE forces, because they had withdrawn from Manila and surrounding provinces to Bataan. Neither was there any risk from guerrilla forces because guerrilla units began to organize only after the fall of Bataan in April, 1942. As to saboteurs, whether civilian or military, it is of common knowledge that buildings or communities are destroyed by fire upon the approach of the enemy. No such acts of sabotage were perpetrated in Lucena or in the province of Tayabas. There was no danger from saboteurs among the civilian population after the Japanese forces occupied Lucena on December 27, 1941, because there is absolutely no evidence of the possible existence of such elements, for, according to

the evidence of record, except for looting, there was peace and quiet in the municipality of Lucena upon the coming of the Japanese forces.

Again we fail to understand how sealing alone can increase the risk or hazard to which a building is exposed. Whether sealed or not, if the contents of the building are war materials, of value or use to the contending forces, they would be subject to confiscation or commandeering. Besides, the sealing was an act of the enemy over which the plaintiff-appellee had no influence or control. We, therefore, hold that the policies did not cease to attach by reason thereof.

For the foregoing reasons, this court declares that, while the trial court committed an error in holding that defendant-appellant has waived article 8 of the policies, the said error is immaterial, as its ruling that no increase in the risk was occasioned by the sealing is correct.

As regards the second question, the Court of Appeals made the following pronouncement:

We find that the trial court did not find that the conditions in Lucena at the time of the loss were abnormal. In reaching this conclusion it held that Lucena ceased to be the theater of war operations upon its occupation; that the conflict became localized around Bataan and Corregidor; and that for these reasons invasion was consummated on December 27, 1941, in so far as Lucena is concerned. It further seems to have held the view that the term "abnormal conditions" used in the policy means actual warfare, or actual rioting or disturbances, or conditions short thereof. This interpretation is believed to be unjustifiably strict. We understand that it is not, it can not be, actual fighting itself. It should be a situation, a condition of things deviating from the normal or ordinary and produced only by war or invasion, etc. The term "abnormal" means "not conformed to rule or system; deviating from type; anomalous; irregular." (Webster's International Dictionary.)

The evidence of record shows that the Japanese forces entered Lucena on December 27, 1941, early in the morning. At the time of the entry many, if not most, of the people had evacuated to barrios or out of the way places in order not to be in the way of the Japanese forces or near them, and by January 5, 1942, only about one-half of the population had returned to town. We can imagine the feeling of fear or uneasiness that pervaded the people, who were new to the ways of war and to the army of occupation and its idiosyncracies. The timid stayed away from the town; the bold resorted to looting stores and even the homes. These conditions were general throughout the islands, and this court takes judicial notice thereof.

In Lucena the stores that were closed were sealed. There were actually no disorders, but looting was rampant till the end of the year and sporadic thereafter for a few days. Japanese soldiers patrolled the streets and dispersed persons seen in groups. They kept guard day and night. Passes were issued to residents until about January 10, 1942.

The court takes judicial notice of the fact that on January 2, 1942, the commanding general of the Japanese forces of occupation enjoined all public and municipal officials to continue in their respective offices. In Lucena, however, this order was evidently not carried out or followed. Instead, a commission of citizens was created upon the written petition of some of them dated January 11, 1942 (Exhibit 10). A government was thereafter organized or authorized by the army of occupation, and it legally and actually superseded the government in existence before the occupation, but which had ceased to function even before the advent of the Japanese Army.

As to the essential public services, the evidence shows that there was no police department and that the Japanese soldiers guarded the streets and kept peace and order. The fire department by January 5 had not yet been organized and there was no equipment, except the hose. Curfew was maintained for many days after the entry of the Japanese soldiers in the town and it continued even after the date of the fire on January 5. The electrical service that furnished light in the town had been suspended and it was not resumed until February 8.

The above conditions and circumstances conclusively prove, to our mind, that conditions in Lucena on and before January 5, 1942, the date when the fire occurred, were abnormal. Abnormal conditions do not necessarily imply disorders, fighting, looting, etc. The existence of a regularly organized government with its police, health, and fire departments is a sign of normalcy in a community. The absence thereof is a sign of abnormal conditions. These are clearly reflected also in the conduct of the people, in the closing of their homes, their absence from the town, the fact that they retired to barrios at night for rest, etc. This is not strange as the army of occupation was new to the people and it had quaint and peculiar rules, and soldiers were fierce, cruel and unadapted to the ways of the people who had lived under a free and democratic atmosphere. We, therefore, agree with the appellant and *amici curiae* that the trial court erred in not finding that the fire occurred during the existence of abnormal conditions directly caused by war and invasion.

The above error, however, has not been in any manner prejudicial to the interests of the defendant-appellant, inasmuch as the court proceeded in the decision of the case on the theory that the plaintiff had the burden of proof, *and actually succeeded in proving that fire occurred from causes independent of the abnormal conditions*, although the reason that it gives why the plaintiff has such an obligation is because he has made a negative allegation in his pleading to the effect that the fire had no relation with the war, invasion, civil commotion, etc. * * * (Italics supplied.)

The next question to decide is: Did the fire occur independently of the abnormal conditions? The evidence submitted by plaintiff shows that a few days before the fire there was peace and order in Lucena; that the Japanese soldiers were the ones who preserved peace and order, patrolling the streets and posting sentries at strategic points; that people behaved well, although they used to retire to the barrios to pass the nights; that looting was already stopped by the time fire occurred; that the plaintiff-appellee's building was closed and the stores located therein were also closed and sealed; and that the Japanese soldiers and the people all helped in putting out the fire.

On the other hand, the testimonies of the witnesses for the defendant-appellant show that the fire originated in the kitchen of Perrera's panciteria, which was located in a building beside plaintiff-appellee's building; that Perrera's building was closed and its owner had evacuated on December 26; that he left in charge of the place his *encargada*, Crisanta Malubay, to take charge of the house; that in the morning of January 5 she was in the panciteria and saw that everything was in order therein, the chairs and utensils intact; that in front of the Tan Chuaco building there were Japanese trucks and bicycles parked, but that the building was not occupied by them; that the fire was discovered in the kitchen of the panciteria, and the *encargada* and her husband entered the place through a window to get their clothing as the door to the place was locked; that Perrera's panciteria was separated from the Tan Chuaco building by a narrow alley, so narrow that the roofs of both houses almost touched each other and covered the

alley; and that on the upper floor Perrera's was separated from the alley by galvanized iron sheets, and on the lower by wooden gratings only.

One witness for the defendant, Pedro Asi, testified that upon seeing the fire he saw two individuals running away from the scene, seemingly fearful, and that he followed them on consciously. Another witness, the husband of the caretaker of Perrera's place, also testified that the sacks of rice that used to be inside Perrera's place were no longer there in the afternoon of the first; but this supposed fact was denied by his wife, who said that there was no rice lost or scattered on the floor of the kitchen. This witness also stated that the lock of the door facing one of the streets was forced open.

The trial court found that the fire which caused the loss of the building *had no direct or indirect relation, either proximately or remotely, with the abnormal conditions alleged by the defendant, and held that it was, therefore, the result of causes independent of said abnormal conditions.* (Record on Appeal, p. 39). A careful consideration of the facts and circumstances shown at the trial *discloses, to our mind, no reason for disturbing the above finding of fact.* The fire originated from the kitchen of the panciteria at about 1:30 in the afternoon. In the morning, the caretaker (*encargada*) of the panciteria was in the kitchen with her husband and did not notice anything peculiar or extraordinary therein. It is not disclosed whether they used the kitchen and whether they stayed there till noon. There were then many Japanese soldiers patrolling, and the people were quiet and peaceful, either through timidity or fear of the Japanese. The fire could not have possibly been of an incendiary origin, as the house was closed when the fire started and the things that the *encargada* saw in the morning in the kitchen were still there when the fire was discovered. (*Italics supplied.*)

If the fire started from the kitchen, *it must have been purely an ordinary and accidental fire.* We cannot give any importance to the fact that Pedro Asi saw two people running away from him when he first saw the fire, as he was going to the fire, because by that time the fire was already big and the two whom he saw running could not have possibly been the authors. Besides, it is usual for people to see persons running on these occasions for varied reasons. Neither can we give credence to the alleged looting of the rice indicated by witnesses Proceso Pineda, because this statement of his was denied by his wife, the real *encargada*, who says she was the only one who went into the panciteria on the afternoon of the fire. Even if the looting of the rice had taken place, it can not be assumed therefrom that the looter set fire to the building. (*Italics supplied.*)

It is, furthermore, useful to note that the building known as Perrera's place was very close to plaintiff-appellee's building, only about more than a meter away, and on the lower floor it had a wooden grating that separated it from the insured building. With this fact in mind, it is difficult to believe that the presence of fire department would have been of much help. Indeed, defendant-appellant's counsel themselves admit that the fire could have occurred even if a fire department was in existence. The risk caused by the proximity of the building to the contiguous building is not a new one, and must have already been considered at the time of issuing the policy.

Our conclusion from all the above considerations is that the evidence of record, whether furnished by the plaintiff or by the defendant, disclose that *the fire in question was purely an ordinary and accidental one, unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom.* It could have occurred just as well in times of peace and under normal conditions, as it

actually occurred under abnormal conditions. In the language of the policy and as concluded by the trial court, it occurred independently of war, invasion, civil commotion, or of the abnormal conditions produced thereby. Resuming what we have stated above, we declare that, while we agree with the appellant that the trial court should have proceeded by first finding whether conditions were or were not normal and that it committed an error in holding that the fire occurred during normal conditions, its conclusion that the fire occurred independently of the abnormal conditions is not incorrect. (*Italics supplied.*)

On the third question, the Court of Appeals held:

As to the third assignment of error, the record discloses that the plaintiff-appellee had a previous building on the land on which the insured building was built, which had also been destroyed by fire from neighboring buildings. On the basis of this fact, it is claimed on defendant-appellant's behalf that the plaintiff-appellee should be considered as having forfeited all benefits under the policies, in accordance with article 13 thereof. Three objections are raised against this claim, namely, that it had not been raised in defendant-appellant's answer; that it has been waived and appellant is estopped from asserting it now, especially for the first time on this appeal; and that the misstatement is immaterial and not fraudulent.

The first objection is procedural, but it is a valid one because plaintiff-appellee was not aware of this defense and had no opportunity to introduce evidence to counteract it. The second objection is also well founded, as the defendant-appellant by its letter rejecting the claim disclaimed liability only under Article 6, thus making plaintiff-appellee believe that the defense was on article 6 alone (32 C. J. p. 1354). We also sustain the third objection, as the previous fire that appellee failed to mention in answering the questions appearing in the claims application is certainly immaterial and irrelevant, in so far as the fire in question is concerned (32 C. J. p. 1271).

The findings of the Court of Appeals (1) that the sealing of, and the placing of posters on, the building by the Japanese Forces did not increase the hazard or risk to which the building was exposed and, therefore, the insurance did not cease to attach under article 8 of the policies; and (2) that the fire which destroyed the building "was purely an ordinary and accidental one, unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom," are binding and conclusive upon this Court.¹

¹ *Guico vs. Mayuga*, 63 Phil., 328; *Mateo vs. Collector of Customs*, 63 Phil., 470; *Mamuyac vs. Abena*, 38 Off. Gaz., 84; *Hodges vs. People*, 40 Off. Gaz., No. 3 (1st Supp.), 227; *Mora Electric Co. vs. Matik*, 40 Off. Gaz. (2nd Supp.), 93; *Meneses vs. Commonwealth of the Philippines*, 40 Off. Gaz. (7th Supp.), 41; *Diaz vs. People of the Philippines*, G.R. No. 46285, 40 Off. Gaz., No. 7 (3rd Supp.), 22; *Onglengco vs. Ozaeta*, 40 Off. Gaz. (7th Supp.), 186; *Hernandez vs. Manila Electric Co.*, 40 Off. Gaz. (10th Supp.), 48; *Gerio vs. Gerio*, 40 Off. Gaz. (10th Supp.), 53; *Garcia de Ramos vs. Yatco*, 40 Off. Gaz. (10th Supp.), 124; *People vs. Benitez*, 1 Off. Gaz. 880; *Sabirre vs. Quijano*, 2 Off. Gaz. 388; *Luna vs. Linatoc*, 2 Off. Gaz. No. 7, 680; and *Goingco vs. Flores*, G.R. Nos. L-2147, & L-2148, 46 Off. Gaz., 1566.

It has not been shown that the findings of fact made by the Court of Appeals are arbitrary, whimsical, manifestly mistaken, illogical, or absurd, so as to warrant this Court to step in in the exercise of its supervisory power.² And as to the defense based on article 13, the same is not set up in the special defenses, unlike the one under article 8 which is set up in the 4th and 5th special defenses and the other under article 6 set up in the 2nd special defense. This Court cannot determine whether the defense under article 13 is included in that of article 11 pleaded in the 6th special defense because the policies are not before it.

It is strenuously contended that the sealing of, and the placing of posters on, the building insured increased the risk, because the latter "concerns itself with probabilities and possibilities from the prospective point of view," and "cannot be retrospective, for insurance contracts are never consummated after the known happening of the event." The contention as to the increase in the risk due to a change in the condition of the building insured was overruled by the Court of Appeals, and in so doing it took into consideration the fact that the building insured was sealed and that posters were placed thereon by the Japanese forces. As already stated, that conclusion cannot be reviewed.

The Court of Appeals set out at length the evidence submitted by the parties and from such evidence it concluded that the loss was occasioned by a cause independent of, and "unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom," or the existence of abnormal conditions prevailing in Lucena. Counsel for the petitioner contend that such conclusion is inferred from the fact that the fire "was purely an ordinary and accidental one." The contention is not well taken, because the Court of Appeals found that the fire was "unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom." In *Royal Insurance Co. vs. Ruperto Martin*, 192 U. S., 149; S. C. Rep. ed. 149-167; 48 Law. ed., 385-391, the Supreme Court of the United States held:

We come now to the merits of the case; our attention being first directed to the questions arising under that clause of the policy providing that it shall not cover "loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law within the country or locality in which the property insured is situated, * * *".

As the words of the policy are those of the company, they should be taken most strongly against it, and the interpretation should be adopted which is most favorable to the insured, if such interpretation be not inconsistent with the words used. *First Nat.*

² *Luna vs. Linatoc*, 2 Off. Gaz. (No. 7), 680.

Bank *vs.* Hartford F. Ins. Co. 95 U.S. 673, 678, 679, 24 L. ed., 563, 565; Liverpool & L. & G. Ins. Co. *vs.* Kearney, 180 U.S. 132, 136, 45 L. ed., 460, 462, 21 Sup. Ct. Rep. 326; Texas & P.R. Co. *vs.* Reiss, 183 U.S. 621, 626, 46 L. ed., 358, 360, 22 Sup. Ct. Rep. 253. In this view the above words should be held to mean that the policy covered loss by fire occurring during the existence of (if not occasioned by nor connected with) any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law, in the general locality where the property insured was situated. * * * Now, whether there was any substantial connection between the fire and military or other disturbance of the kind specified existing in the locality where the property was situated was a question of fact, and it was properly left to the jury. * * *

* * * It is to be taken that the jury found, upon the whole evidence, that the loss was occasioned by causes independent of the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law. The facts under this issue having been fairly submitted to the jury, its finding cannot be disturbed.

The petition for a writ of *certiorari* is dismissed, with costs against the petitioner.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Tuason, Reyes, and Torres, JJ., concur.

Petition dismissed.

[No. L-1577. January 31, 1950]

ENRIQUE BAUTISTA, petitioner, *vs.* EUSTAQUIO FULE,
respondent

1. JUDICIAL SALE; RIGHT ACQUIRED BY PURCHASER AT AN EXECUTION SALE.—The right acquired by the purchaser at an execution sale is inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is, like any other right, entitled to protection and must be respected until it is extinguished by redemption.
2. PURCHASE AND SALE; STATUTORY CONSTRUCTION; RIGHT OF VENDOR IN CONVENTIONAL REDEMPTION; ARTICLE 1510, CIVIL CODE, CONSTRUED.—In authorizing the vendor *a retro* to enforce his right of repurchase against any possessor who holds under the vendee, article 1510 of the Civil Code has provided a saving clause in favor of the rights of third persons under the provisions of the Mortgage Law whose function may, in the case of land not registered either under that law or the Land Registration Act, be deemed to be performed by those of Act No. 3344, and registration under this Act produces its effects against third persons.

PETITION to review on *certiorari* a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Zosimo D. Tanalega for petitioner.

Tomas Dizon for respondent.

REYES, J.:

This is an appeal from a decision of the Court of Appeals.

The essential facts are not in dispute. Felipe Suarez was the owner of a parcel of unregistered coconut land situated in Alaminos, Laguna. On June 30, 1930, Suarez sold this land to Gregorio Atienza for ₱1,300 subject to repurchase within ten years. Atienza, in turn, sold it to Valentin Dimaano for ₱100 subject to redemption within five years. (This last transaction was, however, found by the Court of Appeals to be a mere equitable mortgage and not a *pacto de retro* sale.) Some four years thereafter the land was levied upon to satisfy a judgment rendered against Gregorio Atienza in a case brought against him by Enrique Bautista and it was, on April 10, 1935, sold at public auction to Bautista for ₱258.59, the sale being registered seven days later, that is, on April 17, under Act No. 3344. Under the law Atienza had the right to redeem the land within one year from the date of the auction sale. But before the expiration of that period, that is, on January 13, 1936, the land was repurchased from Atienza, redeemed from Dimaano, and then sold outright to Eustaquio Fule by its original owner and vendor *a retro*, Felipe Suarez.

To recover the land from Fule, Bautista instituted the present action in the Court of First Instance of Laguna, contending that the repurchase of the property from Atienza and its sale to Fule were fraudulent and fictitious and that it was from him (Bautista) and not from Atienza, that Suarez should have made the repurchase. Overruling both contentions, the Court of First Instance dismissed the action, and the dismissal having been affirmed by the Court of Appeals, the case has been brought to us for review.

Accepting, as we must, the finding of fact of the Court of Appeals that the repurchase of the property from Atienza and its sale to Fule were not fraudulent and fictitious, the question for us to determine is whether Fule has, by virtue of those transactions, acquired a right superior to that acquired by Bautista as a purchaser in a prior sale that was duly registered.

Section 24, Rule 39, Rules of Court, provides that the purchaser of real property at an execution sale "shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto," subject to the right of redemption therein provided. The right acquired by the purchaser is, of course, inchoate and does not become absolute until after the expiration of the redemption period without the right of redemption having been exercised. But inchoate though it be, it is, like any other

right, entitled to protection and must be respected until it is extinguished by redemption.

In the present case, the right or title acquired by Bautista at the execution sale was never so extinguished, for Atienza, the judgment debtor, failed to exercise his right of redemption. Neither was Bautista's right or title extinguished by the subsequent repurchase of the property from Atienza by Suarez as vendor *a retro*. Having been divested of all his right to the property as a result of its sale at execution, Atienza had nothing more to transmit to Suarez except his right to redeem within the statutory period. The sale at execution did not, it is true, foreclose Suarez' right to repurchase as vendor *a retro*. But the repurchase should have been made from the holder of the title and not from him who, having been divested thereof in accordance with law, had nothing more to convey except the bare right of redemption accorded to a judgment debtor. And Atienza never made a conveyance of this right. Neither did he exercise it himself. And even supposing that the right passed to Suarez when he repurchased the property, the fact remains that the redemption period of one year passed without the said right having been exercised.

Fule may not claim ignorance of the execution sale, for it was registered under Act No. 3344 on April 17, 1935. He must, therefore, be deemed to have constructive notice thereof when, on January 30, 1936, he bought Suarez' interest and at the same time redeemed the land from Atienza. With such notice Fule is not entitled to the rights of a purchaser in good faith.

In justifying the repurchase of the land from Atienza instead of from Bautista, the lower court cites article 1510 of the Civil Code which provides:

"The vendor may bring his action against any possessor who holds under the vendee, even though in the second contract no mention should have been made of the conventional redemption, saving always the provisions of the Mortgage Law with respect to third persons."

It should be noted, however, that in authorizing the vendor *a retro* to enforce his right of repurchase against "any possessor who holds under the vendee," the article has provided a saving clause in favor of the rights of third persons under the provisions of the Mortgage Law, whose function may, in the case of land not registered either under that law or the Land Registration Act, be deemed to be performed by those of Act No. 3344. If this Act is to have any utility at all, registration thereunder should produce its effects against third persons.

It follows from the foregoing that the repurchase of the land from Atienza instead of from Bautista did not divest the latter of his right to said land as purchaser at

the auction sale, a right which must now be deemed to be absolute in view of the non-redemption of the property by the judgment debtor or any other person entitled thereto within the period prescribed by the Rules. Obviously, Fule's remedy is against Atienza for the recovery of the sum paid to him in the repurchase.

Wherefore, the decision appealed from is reversed, and, as between the appellant and the appellee, the former is declared to be the one entitled to the land in litigation. The appellee shall pay costs.

Moran, C. J., Bengzon, Padilla, Tuason, and Torres, JJ., concur.

PARÁS, J., dissenting:

The land in question contains 10,000 square meters and is assessed at ₱730. It was sold by the owner, Felipe Suarez, to Gergorio Atienza for ₱1,300 subject to the right of repurchase within ten years from June 30, 1930. Atienza in turn sold his rights for ₱100 to Valentin Dimaano, with right of redemption within five years. Enrique Bautista, a judgment creditor of Atienza, levied upon the land and had it sold at public auction on April 10, 1935, at which Bautista himself became the purchaser at ₱258.59. Atienza failed to exercise his right of redemption against Bautista within the reglementary period of one year from the date of the auction sale. On January 13, 1936, the land was repurchased from Atienza and Dimaano by Suarez who conveyed the same to Eustaquio Fule by way of absolute sale.

The majority, reversing the judgment of the Court of First Instance of Laguna and the Court of Appeals, holds that the title of Bautista to the land became absolute as a result of Atienza's failure to redeem it within one year from April 10, 1935. In my opinion, Fule, as successor in interest of Suarez, could repurchase the land within ten years from June 30, 1930. The right of repurchase of Suarez (the original owner) and of Fule (transferee of Suarez) was not affected by the failure of Atienza to redeem from the auction sale in favor of Bautista, because what consolidated in the latter is the right of Atienza (which, by the way, passed to Dimaano) to become absolute owner upon failure of Suarez to redeem within ten years from June 30, 1930. In other words, Bautista did not acquire at the auction sale any right better than that of his judgment debtor, Atienza. Atienza, who merely lost his connection in the chain, was replaced by Bautista, but the right of repurchase of Suarez and his successor in interest, Fule, remained intact, although the latter mistakenly paid the repurchase price to Atienza, instead of to Bautista.

I therefore vote to affirm the decision of the Court of Appeals, with the sole modification that the herein respondent Eustaquio Fule is ordered to pay to the petitioner Enrique Bautista the sum of ₱1,300.

Ozaeta, J., concurs.

Decision reversed.

[No. L-1655. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ROBERTO BAUTISTA (*alias* ERIBERTO OCAMPO), defendant
and appellant.

CRIMINAL LAW; TREASON; ACCUSED'S ACTIVITIES WITH THE ENEMY IN THE SUPPRESSION OF GUERRILLAS.—There is not the least doubt that from the time when the appellant surrendered to the Japanese after severing his connection with his unit in the air force of the Philippine Army, he completely identified himself with the invaders and became very active by taking part in the expeditions, raids and other activities conducted by the Japanese for the purpose of suppressing the underground movement. And he did not only accompany the members of the Japanese *Kempei-tai* in their activities in Cebu and Bohol, but he likewise took part in the investigation and torture of all his Filipino compatriots who were suspected of being connected with the guerrillas. His adherence to the enemy and treasonous intent and activities amounting to giving aid and comfort to his new masters, have been duly proven in accordance with the requirements of the Treason Law.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Simon R. Cruz for appellant.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Florencio Villamor* for appellee.

TORRES, J.:

Sentenced to *reclusión perpetua* by the People's Court upon his conviction for treason on five out of six counts embodied in the information filed against him, Roberto Bautista *alias* Eriberto Ocampo has appealed to this Court in an effort to secure the reversal of said judgment.

In substance the challenge of the correctness of the judgment of the People's Court is predicated on the ground that the facts on which the People's Court based the conviction of the accused-appellant has not been fully substantiated. From our study of the evidence we find the following:

As to count No. 1. It has been shown by the prosecution that Roberto Bautista, by his own admission, a "Filipino by birth and blood," at the outbreak of the war in 1941, was an enlisted man of the Air Corps of the Philippine Army, assigned to the Seventh Air Observation Squadron Outfit with station in Lahug Field, Cebu City.

He surrendered to the Japanese forces when the latter occupied Cebu. Later on, he became widely known not only in Cebu, but also in Bohol, as an undercover agent of the Japanese, carrying a revolver, and accompanying Japanese soldiers and other spies, and participated in their raids against, apprehension and investigation of, guerrilla suspects.

In support of count No. 1, prosecution witness Virginio Garces testified that he saw the appellant in the municipality of Clarin, Bohol, in company with members of the Japanese *kempei-tai*, when at midnight of June 24, 1944, the Japanese were conducting a mopping operation, during which Virginio and one Conrado Gerali were captured in the barrio of Bonbon, Clarin, by a group of about twenty members of the *kempei-tai*, composed of Filipinos and Japanese, and appellant, armed with a revolver, was with said group. Garces was taken to the municipality of Inabanga, investigated by Captain Tsuriyama and one Lolong Sanchez as a guerrilla suspect, was tortured by one Jesus Ocampo, and during his confinement he saw Mrs. Gallardo in the cell.

Another witness, Gloria Lavilles, stated that during that month of June, 1944, she saw appellant armed with a revolver in company with Japanese and Filipino members of the *kempei-tai*, when they arrested her uncle Jovito Sorio in his house in Clarin, Bohol, and took him to the school building and later to the municipality of Inabanga, where the prisoner was tortured by one of the spies. In one of her visits to her uncle during his detention, Gloria saw other prisoners, among whom were Mrs. Gallardo, wife of Major Gallardo, and Captain Garcia of the Bohol guerrillas and Mr. Mercado, the mayor of Inabanga. Gloria Lavilles further said that she saw appellant on various occasions with Japanese soldiers and undercover agents patrolling the municipality of Clarin, always armed with a revolver. A third witness, Maria Consuelo Gallardo, corroborating the testimony of Virginio Garces and Gloria Lavilles, testified that in the afternoon of July 3, 1944, she saw appellant with Japanese soldiers and spies, including Jesus Campos (or Ocampo), Antonio Recaza, Margarito Campo, Perfecto Libre, Irineo Gorro and Julio Nolasco, all of them armed with rifles and revolvers, when she was arrested by them with her child and servant, and one Mr. Tendencia and Segundino Sison of the Bolo Battalion and mayor De Millos. She was brought first to the school building in Clarin where she was investigated, and then transferred to the town jail of Inabanga from which place, after ten days, she was transferred to Cebu and released on parole. During her detention, appellant, who was her guard, had been boasting that he was a graduate of the PMA (Philippine Military Academy) and that while

patrolling the place with the Japanese he had been confiscating goods from civilians.

Count No. 3.—In connection with this charge, it has been shown that Lt. Pacifico Rosales, Intelligence Officer of the G-2 Bohol Area Command, in company with Eriberto Abellana and other guerrillas of the Bohol Command, met the appellant in a certain *panciteria* in Sikutuna street, Cebu City, and questioned this appellant regarding the activities of the Japanese. But this accused, instead of furnishing the information desired of him, tried to convince Lieutenant Rosales and his companion that they should surrender and join him in his undercover work for the Japanese; in fact he told them that this guerrilla business was "just foolishness"; and by way of warning the accused further said, "Give us time to think it over."

At about 8 o'clock in the morning of July 8, 1944, Lieutenant Rosales was in the house of Francisca Garcia in Pasil, Cebu City, to exchange Philippine currency with Japanese war notes. However, he left the house to attend mass at the nearest church and, upon his return, he noticed that he was being followed by two individuals and soon thereafter another person named Failing also came by. Sensing danger, Rosales went up the house immediately, only to go out again by another stairway, but unfortunately he was stopped by this appellant and the man named Failing who immediately tied him. He was dragged to the seashore, put in a sailboat together with appellant and Failing, while two other men, companions of the appellant, named Badili and Joe Cabrera, took another banca and sailed away. Since then Rosales has never been heard of.

It appears that Badili, is the same Roque Badili who was convicted for treason by this Court in a decision penned by Justice Ozaeta and rendered on June 27, 1949 (*People vs. Roque Badili*, G. R. No. L-565). One Alberto Bautista (or Roberto Bautista) is mentioned as one of those who arrested Lieutenant Rosales in the premises of Francisca Garcia. We quote the following from said decision.

"In count No. 8 it is alleged that on or about July 16, 1944, in Pasil, San Nicolas, Cebu City, the accused in conspiracy with the enemy and other Filipino secret agents, with intent and purpose of giving aid and comfort to the enemy, did then and there wilfully, feloniously, and treasonably capture Lt. Pacifico Rosales of the guerrillas, tie and torture him, and did drag him to a sailboat and kill him while at sea. To prove that allegation three witnesses were called by the prosecution, namely, Francisca Garcia, Basilio Argoso, and Pastor Abellana.

"Francisca Garcia testified that she was forty years of age, married, and a resident of Pasil, Cebu City; that on the morning of July 16, 1944, Lt. Pacifico Rosales came to her house to exchange Philippine currency with Japanese military notes; that since she did not have enough cash at that time, Rosales left to go to church, saying that he would come back later; that soon after Rosales came

back, the accused and two other undercover agents named Bautista and Failing, who were then near her house on the seashore rigging up a sailboat, saw Rosales and immediately surrounded her house; that Rosales went out thru the back door in an attempt to escape but was apprehended by Bautista and the accused. By order of the accused Lieutenant Rosales' hands were tied at his back, after which he was dragged to one of the sailboats on the shore. Bautista and Failing boarded another sailboat. The two boats then put to sea, and after that she had not seen nor heard of Lieutenant Rosales any more.

"Basilio Argoso, a twenty-three-year-old fisherman and neighbor of Francisca Garcia, testified that he had known the accused since before the war; that he also knew Lt. Pacifico Rosales; that on the morning of July 16, 1944, after hearing mass he saw the accused and his companions Alberto Bautista and Jose Garcia arrest Lieutenant Rosales in the premises of Francisca Garcia; that after capturing Rosales they tied him and brought him to a sailboat; that the companions of the accused boarded the boat where they had placed Lieutenant Rosales while the accused boarded another boat, and then the two boats sailed towards the island of Bohol; that he knew that Lieutenant Rosales belonged to the Philippine Army; and that at that time the accused and his companions were armed with revolvers.

"Pastor Abellana, a twenty-seven-year-old merchant of Cebu City, testified that in July, 1944, he was technical sergeant and member of the G-2 of the Philippine Army assigned to the Bohol Area Command; that Lt. Pacifico Rosales was his officer; that on the morning of July 16, 1944, he went to meet Lieutenant Rosales in the house of Francisca Garcia in Pasil because he had an agreement with him to meet him there; that before he reached the house of Mrs. Garcia he saw Lieutenant Rosales captured by the accused Roque Badili and his companions; that instead of going to Mrs. Garcia's house he went to the house of a friend of his named Godofredo Borres; that from the latter's house he saw Lieutenant Rosales 'being dragged by these people with his hands tied behind him and he was brought to the sailboat'; that he (the witness) was about thirty yards from the place where they brought Lieutenant Rosales; that the accused Roque Badili was the one holding the rope tied to Lieutenant Rosales; that as soon as Lieutenant Rosales was placed in the boat 'they headed for the sea.' When asked who 'they' were, he replied 'Roque Badili, Bautista, Jose Moro, and there were others I did not recognize.' He further testified that as a member of the military organization of Lt. Pacifico Rosales, he made an investigation to ascertain his whereabouts; that according to the members of the crew of the sailboat Rosales was killed and thrown into the sea; that the members of the crew had gone to Mindanao and could not be located at the time of the trial."

Count Nos. 4 and 5.—On July 29, 1944, with the help of their undercover agents, including appellant, the Japanese conducted a mass raid against the civilian population of Basak, Cebu City, and apprehended Jose de la Cerna, Antonio de la Cerna, Celestino Padilla and Tereso Sanchez. The captives were brought to the school building of Basak where appellant addressed the group urging them to surrender their firearms, and that if no firearms were surrendered they would all be killed. On that occasion one Filemon Delgado, an undercover man of the Japanese, together with a captured guerrilla soldier named

Brigido, pointed Jose de la Cerna as one who had been aiding the resistance movement and that his brother Domingo de la Cerna was the courier of Governor Abellana of Cebu, who was well-known to the Japanese on account of his guerrilla activities. On account of this information, Jose de la Cerna was brought before a Japanese named Watanabe of the Japanese *kempei-tai*, who gave De la Cerna fist blows on the body which caused the victim to fall to the ground. Then Recaza, another Japanese spy, stepped on the throat of De la Cerna who thus lost consciousness. Upon regaining his senses, Jose de la Cerna was taken to the schoolhouse, and this appellant tied his hands behind his back and for about three hours had him suspended in mid-air, during which time De la Cerna underwent severe manhandling and the most barbarous tortures. Appellant kicked De la Cerna and with an iron rod and a wooden stick struck him several times and at the same time questioned him regarding the whereabouts of his brother and of Governor Abellana. After being tortured for three hours, he was lowered from his hanging place and another undercover man suggested that De la Cerna being connected with the Custom House might have a firearm in his possession. De la Cerna was then taken home where he surrendered his firearms, after which he was taken back to the schoolhouse and the following morning turned over to the *kempei-tai*. After one month of incarceration he was released. As the result of his incarceration, manhandling and beating, De la Cerna is still suffering from two broken ribs and a sprain on his shoulder joints. De la Cerna, testifying in this case, stated that he saw other persons being tortured by appellant, he mentioned particularly a person by the name of Padilla, who in his turn saw that De la Cerna was being tortured by this appellant.

In support of these two counts, the prosecution has also shown that on July 30, 1944, the Japanese soldiers and their undercover agents arrested a group of persons who were brought to a nearby mountain, at a place called Sandayon. With that group there was an old man who was being quizzed as to the whereabouts of guerrilla soldiers, but the prisoner could not give any satisfactory answer and he was suspended in mid-air, beaten, and stoned by his captors. Perhaps in order to secure his release from the Japanese and their spies, the old man told them that they would find guerrillas in a small hut a little further yonder. He was then released and after tying his hands was told to lead the way. Unfortunately, upon reaching the place indicated by him, there were no soldiers or guerrillas to be found, and the old man was not only tortured, but bayoneted to death by appellant with the help of his companions.

There is no question as to the citizenship and allegiance of this appellant, and from the testimonies of the witnesses of the prosecution, there is not the least doubt that from the time when he surrendered to the Japanese after severing his connection with his unit in the air force of the Philippine Army, he completely identified himself with the invaders and became very active by taking part in the expeditions, raids, and other activities conducted by the Japanese for the purpose of suppressing the underground movement. And he did not only accompany the members of the Japanese *kempei-tai* in their movements in Cebu and Bohol, but he likewise took an active part in the investigation and torture of all his Filipino compatriots who were suspected of being connected with the guerrillas. His adherence to the enemy and treasonous intent and activities amounting to giving aid and comfort to his new masters have been duly proven in accordance with the requirements of the treason law.

Although there is no direct and conclusive evidence by which he can be made personally responsible for the killing or disappearance of Lieutenant Pacifico Rosales, yet, under the facts proven in this case, it cannot be denied that his direct participation in the apprehension of said army officer led to the disappearance of the latter and his eventual death. Finally, with regard to counts 4 and 5, and notwithstanding the counter-evidence of the defense, to the effect that appellant did not participate in the manhandling and torture of Jose de la Cerna and Celestino Padilla and in the killing of the old man who failed to lead his captors, the Japanese *kempei* and his undercover men, to the place where the guerrillas were expected to be found, upon going over the evidence in this regard, we are satisfied that said counts have been amply proven by the prosecution.

Predicated on all the foregoing, and since we have not the least doubt that this appellant is guilty of treason beyond reasonable doubt, and finding that the judgment appealed from is in conformity with law, and that no errors have been committed by the People's Court in the determination of this case, we hereby affirm the same with costs to be paid by the appellant.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment affirmed.

[No. L-1731. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FAUSTINO FLORES, defendant and appellant

[No. L-1676. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. LEON GUTIERREZ, defendant and appellant

[No. L-1624. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FELIPE REYES, defendant and appellant

CRIMINAL LAW; TREASON; EVIDENCE; TWO-WITNESS RULE, MEANING OF.—The rule is that every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses. The two-witness rule must be adhered to as to each and every one of all the external manifestations of the overt act in issue and each of the two witnesses must testify to the whole of the overt act; or if it is separable, there must be two witnesses to each part of the overt act.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Manuel A. Concordia for appellants.

Solicitor General Felix Bautista Angelo and *Solicitor Francisco Carreon* for appellees.

REYES, J.:

These three cases were among the thirty that were heard by the People's Court in a mass trial held in Pasig, Rizal by agreement of the parties.

The defendants were charged with treason, the first two (Faustino Flores and Leon Gutierrez) on two counts, and the last one (Felipe Reyes) on five counts. Common to the three defendants was the charge contained in count No. 2, relating to defendants' alleged participation in the "zoning" of the barrio of Tipas, Taguig, Rizal, on December 1, 1944, and it is on this count alone that defendants were found guilty and sentenced to a prison term and fine. Of the other counts, including the charge that they had joined the Makapili organization, defendants were acquitted for lack of proof. The present appeal is, therefore, confined to the second count, which charges each of the appellant as follows:

"That on or about December 1, 1944, in the different barrios of the municipality of Taguig, Province of Rizal, Philippines, the herein accused, acting as informer or agent of the Imperial Japanese Forces in the Philippines, for the purpose of giving and with the intent to give aid and/or comfort to the enemy, with the aid of a group of armed men and Japanese soldiers who afforded him (them) impunity and taking advantage of the darkness of the night, did wilfully, feloniously and treasonably guide and accompany a group of armed men and Japanese soldiers in the 'zonification' of the different barrios in search of guerilla suspects; that, on this occasion, the herein accused, assisted by armed men and Japanese soldiers with the intention of spreading terror around the place and in search of guerrilla suspects, established a perimeter of restricted freedom and mass confinement, arrest, investigation, maltreatment and torture, known in common parlance as 'zona', during which the accused and his companions arrested about 267 male residents, suspected of being guerrillas, and herded them together in a place which was afterwards surrounded

by armed men and Japanese soldiers, and having thus confined the 267 guerrilla suspects and illegally and arbitrarily having deprived them of their freedom, carried out the purpose and plans of the enemy; that, on the same occasion, the accused together with armed men and Japanese soldiers made a house-to-house search in the said barrios and took and turned over to the enemy, for their benefit and for the benefit of the Japanese soldiers for whom they were working and without the consent of the owners thereof, money, jewelry, palay, corn, canned goods, hogs and chickens, and, subsequently, the accused and his companions loaded in Japanese trucks and took to Pasig, Rizal, the 267 guerrilla suspects, all of whom have not returned since then."

Anent the above charge, the People's Court found that early in the morning of December 1, 1944, a mixed force of Japanese soldiers and Filipinos, the latter armed with rifles and revolvers and each wearing a white band across his chest, rounded up the male residents of the different *sitios* of the barrio of Tipas, herded them together at the town plaza and then made them pass single file in front of a house located at one corner of the plaza. At the window of this house were several hooded persons known in those days as "magic eyes," who, as the men passed before them, indicated by a nod the ones suspected of being guerrillas. These were then led to the Aglipayan church where they were subjected to tortures to make them admit their guerrilla affiliation and squeal on the other guerrilla suspects. Some of them were even hanged from trees and the rafters of nearby houses. At about 5 o'clock in the afternoon of that day, the suspects were loaded in trucks and taken to Fort Santiago in Manila, many of them never to return.

The above facts are established by more than the required number of witnesses and are not disputed. The only question of fact presented in the appeal is the participation of the appellants in the "zoning" above described.

As regards the participation of appellant Faustino Flores (G. R. No. L-1731), two witnesses (Antonia Rodriguez and Felisa Rodriguez) testified that said appellant was one of the armed Makapilis they saw in the "zoning" of barrio Tipas. But their testimony does not disclose that they were referring to the same act, place or moment of time, so that it cannot be said that one corroborated the other. Antonia declared that appellant was one of those who went up her house, while Felisa, on her part, stated that she approached appellant on the day of the "zoning" to plead for one Gonzalo Mapalid. But neither statement was corroborated. The result is that there are no two witnesses to the same overt act.

As to the participation of Leon Gutierrez (G. R. No. L-1676) the witness Julita Gregorio testified that she saw the said appellant between 6 and 7 o'clock in the morning of December 1, 1944, arresting and driving the

male residents towards Tipas and that he was among those who went to her store that morning and took her husband along. No one, however, corroborated this testimony. Another witness, Leonila Mañosca, testified to having seen appellant and his companions at about 8 o'clock that morning bearing arms and wearing white bands and in the act of searching the houses. But again the testimony finds no corroboration. Various other witnesses, who also claimed to have seen appellant that day, failed to disclose that they were testifying to the same overt act.

The same defect is to be noted in the testimony of the witnesses against the appellant Felipe Reyes (G. R. No. L-1624). Maria Umali Ramos testified that this appellant was one of those who took her husband from their house. But no one corroborated her on this point. Neither is there corroboration for the testimony of Margarita Bunyi to the effect that she saw appellant at 11 o'clock in the morning of December 1, 1944, at the store of one Teria. The third witness, Rafael Sanga, merely gave the information that he saw appellant bearing arms on the day of the zoning, but his testimony corroborates neither that of Maria Umali Ramos nor that of Margarita Bunyi.

In view of the foregoing, we find merit in the contention of counsel for appellants that their conviction was a violation of the two-witness rule. The Solicitor General contends, in effect, that the zoning of Tipas the whole day of December 1, 1944, constitutes but one treasonous act and since at least two witnesses saw each of the appellants on that occasion, the legal requirement as to the concurrence of two witnesses on the same overt act has been satisfied. To this we can not agree. The rule is that "every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses" (*Cramer vs. U. S.*, 65 Sup. Ct., 918), and in accord with that rule, we have ourselves held that "the two-witness rule must be adhered to as to each and every one of all the external manifestations of the overt act in issue." (*People vs. Abad*, 44 Off. Gaz., 4901.) We have also adopted the rule that "each of the two witnesses must testify to the whole of the overt act; or if it is separable, there must be two witnesses to each the overt act in issue." (*People vs. Abad*, 44 Off. Gaz., 4300.)

The rule as thus formulated may be severely restrictive. But as an eminent author on evidence aptly observes, "The opportunity of detecting the falsity of the testimony, by sequestering the two witnesses and exposing their variance in details, is wholly destroyed by permitting them to speak to different acts."

In view of the foregoing, the judgment of conviction in each of these three cases is revoked and the appellants acquitted, with costs *de oficio*.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

Judgment reversed and defendants acquitted.

[No. L-2000. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. FRANCISCO DEDUYO, defendant and appellant

CRIMINAL LAW; TREASON; ACCUSED'S ACTIVITIES AS MEMBER OF MILITARY POLICE IN THE ARREST AND TORTURE OF GUERRILLAS AND OTHER PERSONS.—Membership in the military police organization during the occupation coupled with participation with the enemy in the arrest, investigation and torture of guerrillas or guerrilla suspects is treasonable.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Gil R. Carlos for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Jaime de los Angeles* for appellee.

PARÁS, J.:

This is an appeal from a decision of the People's Court convicting the appellant of treason and sentencing him to life imprisonment, with legal accessories, and to pay a fine of ₱10,000, plus the costs. The amended information charged 15 counts, but the conviction was premised only on counts 1, 5, and 14.

As to count 1, the evidence for the prosecution shows that during the Japanese occupation the appellant, as member of the military police organization in Sariaya, Tayabas (now Quezon) Province, rendered services to the Japanese army by participating in the arrest, investigation and torture of guerrillas. This count is established by the testimony of Clemente Ballecer and Josefa Vda. de Rodriguez.

As to count 5, it is alleged by the prosecution that on February 9, 1945, the appellant, with Japanese soldiers and some members of the military police organization, arrested in Sariaya Quirico Delica, Manuel Alcala, Jesus Alcala, Antonio Alcala, Jose Jabole, and Abelardo Lopez. On the occasion in which this arrest was effected, appellant accused the people in Barrio Pantoc of being guerrillas. Palay and rice were also confiscated. The persons thus arrested were investigated and maltreated in the garrison housed in the convent in Sariaya. The Alcala brothers and Abelardo Lopez were detained for more than one month. Quirico Delica, after two weeks in the garrison, was taken there-

from and was never heard of. This count was established by Severino Gutierrez, Manuel Alcala, Jose Alcala, Antonio Alcala, Abelardo Lopez, Josefa Rodriguez, and Eligio Fajardo.

Under count 14, it is maintained by the prosecution that in June, 1943, the appellant, after apprehending Alfredo Mendoza in a cockpit in Sariaya, delivered the latter to his Japanese companions. In the afternoon of that day, Alfredo was brought to his house by appellant and some Japanese soldiers. Alfredo's hands were tied behind his back, a rope was around his neck, and his face was swollen. Appellant asked Alfredo to produce his revolver, and upon insisting that he had none, Alfredo was maltreated. The appellant got from Alfredo's wife the keys which the appellant opened their wardrobe, and from this he took money and jewelries. Alfredo was thereafter not heard of.

The defense consists of denials, but in view of the fact that the witnesses for the Government had no reason to falsely incriminate the appellant, we are fully convinced of his guilt. As a matter of fact, appellant's attorney *de officio* concurs in the findings of the People's Court and in appellant's conviction. He merely recommends that the appellant be given the benefit of a mitigating circumstance under article 13, paragraph 10, in relation to paragraph 3, of the Revised Penal Code, in that, as he was uncultured, he could not have known the import and gravity of his acts specially in view of the circumstance that the leaders of his people then decided to feign collaboration with the enemy. We have to reject this plea, because it is inconsistent with the denials set up by the appellant and with the manner in which his treasonable acts were accomplished.

Wherefore, the appealed decision, being in accordance with the facts and the law, is hereby affirmed.

So ordered, with costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

Judgment affirmed.

[No. L-2065. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
HILARION JARDINICO, defendant and appellant

1. CRIMINAL LAW; TREASON; ACCUSED'S ACTIVITIES IN COOPERATING WITH THE ENEMY'S ATROCITIES.—The acts of maltreatment performed by the accused including the looting of the house and its subsequent destruction by fire, all performed by him and his Japanese companions and the bayoneting of P by the accused which were all duly proven pursuant to the two-witness rule, constitute adherence and giving aid and comfort to the enemy.

2. ID.; ID.; HOMICIDE OR MURDER AS INCLUDED IN TREASON.—The crime of homicide or murder is and must be regarded as included in that of treason.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Roman A. Cruz for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Esmeraldo Umali* for appellee.

MONTEMAYOR, J.:

Hilarion Jardinico is appealing from a decision of the People's Court finding him guilty of treason with homicide and sentencing him to death, to pay a fine of ₱20,000, to indemnify the heirs of the deceased Porfirio de la Peña in the sum of ₱7,000 and to pay the costs.

Under an amended information, the accused was charged with treason under five counts. At the trial the prosecution abandoned counts 4 and 5 and presented evidence only on the first three counts. The lower court found the appellant guilty only under counts 1 and 2. In this appeal we are, therefore, concerned only with said first two counts. We are reproducing the amended information with the first two counts.

"That during the years 1942-1944, more specifically on or about the dates hereinbelow mentioned, in the different places hereinafter stated, and within the jurisdiction of this Honorable Court, the above-named accused, Hilarion Jardinico, not being a foreigner, but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, did then and there wilfully, unlawfully, feloniously and treasonably adhere to the Empire of Japan, enemy both of the United States of America and the Commonwealth of the Philippines, giving said aid and comfort, to wit:

"1. That on or about November 26, 1942, in the sitio of Biernesan, municipality of Sagay, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, with intent to give aid and comfort to the enemy; wilfully, unlawfully, feloniously and treasonably acted as a driver and guide to Japanese soldiers, and in the said capacity, accompanied the said Japanese soldiers in their raid in the house of Porfirio de la Peña, who was arrested and taken to the Japanese quarters in Central Leonor, Escalante, Negros Occidental, Philippines, where the said Porfirio de la Peña was killed by the said Japanese aided by the herein accused; on the same occasion, the herein accused, aided by his Japanese companions, looted the house of the said Porfirio de la Peña stealing therefrom about ₱1,000.00 in cash, jewelry, etc. and after looting it the herein accused personally set fire to the said house, as a consequence of which the said house was burned, as also the house of Alejandro Mondido in the same municipality of Sagay, Negros Occidental, Philippines.

"2. That the herein accused, with intent to aid the enemy, acting also as guide and driver to the Japanese, participated in the arrest and killing of 26 other persons, names unknown, in the Central Leonor, municipality of Escalante, Negros Occidental, Philippines, sometime in the month of November, 1942, on charges of being guerrillas or aiding them, which persons, after having been killed,

were left to rot and be eaten by the animals in and around the vicinity of the said Central Leonor."

After a careful review of the records of this case, we find the following facts to be duly established. Appellant Hilarion Jardinico is a Filipino citizen by his own admission. After the arrival of the Japanese forces in the province of Occidental Negros, the appellant was employed by them as a driver of one of their trucks. Thereafter, he always wore a Japanese uniform and carried a rifle. He served the Japanese until the American forces of liberation landed in Negros Occidental.

For convenience we are merging or considering counts 1 and 2 jointly for the reason that the facts or events under count 2 are a continuation of those under count 1. Early in the morning of November 26, 1942, a patrol or raiding party composed of Japanese soldiers and some Filipino adherents, all riding in five trucks one of which was driven by Jardinico, went to the sitio of Biernesan, Sagay, Negros Occidental. Alighting from his truck and leading some Japanese soldiers, the appellant went up the house of the couple Porfirio de la Peña and Josefa de la Peña. Once inside, he grabbed Josefa by the arm and inquired about the whereabouts of the USAFFE soldiers, whom he claimed to have seen jumping out of the window. When the couple denied any knowledge of the USAFFE soldiers, the appellant took them downstairs before a Japanese captain for investigation. When questioned by the said captain and by the appellant about USAFFE soldiers, and upon disclaiming any knowledge of them, Porfirio and Josefa were punched, slapped and kicked by the captain and by Jardinico. To further intimidate Porfirio the Japanese captain ordered him to open his mouth and the appellant inserted the bayonet of his gun into it. In spite of this, Porfirio refused or failed to give any information about USAFFE soldiers, and because of this, his hands were tied behind his back by the Japanese soldiers and by the appellant. The same thing was done to Josefa. Thereafter, the appellant and some Japanese soldiers went up the house of Porfirio and ransacked it, and took and appropriated to themselves clothing and jewelry valued at ₱1,800, including ₱1,000 in genuine Philippine money and ₱200 in emergency notes. Then the appellant and his companions set fire to the house, including three bodegas containing corn, rice and palay which had a total value of ₱2,000. They also set fire to the neighboring houses belonging to the tenants of Porfirio and Josefa. Thereafter, the patrol went toward Central Leonor, Escalante, Negros Occidental, taking Porfirio de la Peña in one of the trucks.

At one time Central Leonor was occupied by the Japanese forces, but subsequently they left it and the USAFFE forces took over and presumably had control over it but

maintained no guard or detachment there. They allowed Filipinos to go inside the bodega of the Central and get all the sugar they needed. That morning of November 26, 1942, when the Japanese patrol arrived or approached the Central, there were about 100 people in or near the bodega in the act of getting sugar. The patrol immediately opened fire on them and killed about 25 Filipinos. Among the people in or near the bodega at the time were the prosecution witnesses—Dominador Gempasala and Francisco Gicano. Apprised of the approach of the Japanese patrol and scared by the first volley they scampered for safety, hiding outside the bodega but near enough to see what happened in that place. They saw appellant Jardínico and a Japanese soldier take down Porfirio de la Peña from the truck. Jardínico led him to a spot on the railroad track of the Central and securely tied him to a post and then at a signal from a Japanese soldier, Jardínico began bayoneting De la Peña until he was dead and his body hung limply from the post. Then Jardínico and the Japanese soldier unfastened his body from the post and dumped it on the square fronting the bodega. After three hours the patrol departed and Gempasala and Gicano ventured out from their hiding place and approached the dead body of De la Peña which they found to bear wounds on both cheeks, on the chest, at the base of the neck and in the abdomen. Both ears were clipped off. Scattered on the same square or plaza were the dead bodies of between 20 to 25 other Filipinos, presumably victims of the gunfire of the Japanese patrol.

In the meantime, Josefa de la Peña had been engaged in a frantic search for her husband. She went to Fabrica where a Japanese detachment was stationed and there found the appellant who informed her that her husband had been left in the garage of Central Leonor, and later a Japanese captain who arrived at the place told her that her husband was able to escape to the mountains. Both informations were, of course, untrue, and were presumably intended to deceive her. During all this time, Josefa was kept in jail by the Japanese for being suspected as a spy of the Filipino resistance forces. After three days she was released and she returned home but on the way she was informed that the dead body of her husband was on the plaza of Central Leonor. Accompanied by her tenant Espiridion Maglimutan and Fortunato de los Reyes, she went to that place, saw the body of her husband already in a state of decomposition together with the corpses of several other men. She also noted the same wounds in the body of her husband already described. She had her husband's body taken home and buried in a plot behind her house.

The acts of maltreatment performed by the accused at or near the house of De la Peña in Biernesan, Sagay, including the looting of the house and its subsequent destruction by fire, all performed by the accused and his Japanese companions were witnessed and testified to by Josefa and her tenant Espiridion Maglimutan who, on the approach of the raiding party ran and hid behind some banana trees. The bayoneting of De la Peña at Central Leonor was witnessed and testified to by Gempasala and Gicano. The two witness rule provided by law has therefore been complied with.

The appellant's defense rests on his claim that although he was employed by the Japanese as a driver, his service was involuntary; that on the morning of November 26, 1942, he had no participation whatsoever in the alleged maltreatment of the De la Peña couple or in the looting and burning of their house but that on the contrary when he found De la Peña behind his truck, being maltreated by the Japanese and some Filipinos, he tried to intervene because De la Peña was his former teacher but the Japanese disregarded his intervention and even suspected him of being a pro-guerrilla; that although he drove to Central Leonor on said morning with the Japanese soldiers, upon arrival there he no longer saw De la Peña. The accused introduced several witnesses in support of his defense. Naturally, the question of credibility of witnesses enters. We prefer to leave the decision on this point to the People's Court which had the opportunity of observing their demeanor while on the witness stand and gauging their credibility. We quote with approval the decision of the trial court on this point:

"Hemos considerado detenidamente las pruebas obrantes en autos y hemos llegado a la conclusión de que las aportadas por la prosecución son merecedoras de crédito. Sobre lo que ocurrió en Biernesan, tenemos los testimonios de la viuda del occiso Porfirio de la Peña y del testigo Espiridion Maglimutan. Estos aseveraron categóricamente de que el acusado, armado de un rifle, fué el que guió a los japoneses a la casa de los esposos Porfirio de la Peña, fué el que llevó a éste y su esposa ante el Capitán japonés, participó en la investigación de dichos esposos así como en la tortura de los mismos y acompañó a la patrulla cuando la misma se dirigió a la Central Leonor llevando al referido occiso Porfirio de la Peña. Dichos testigos también declararon que el acusado tomó participación directa tanto en el saqueo de la casa de Porfirio de la Peña así como en la quema de dicha casa, de las tres bodegas y de las otras vecinas. Los testimonios de ambos testigos son claros y convincentes y no encontramos ningún motivo para dudar de su veracidad. Bajo tales circunstancias, nosotros creemos que los testimonios de dichos testigos no pueden echarse abajo por los testimonios negativos del acusado y de su cuñado Raymundo Abellana. Si fuese cierto, como contiene el acusado, de que él inclusive trató de defender al malogrado Porfirio de la Peña y que de este hecho se enteró su esposa Josefa, no concebimos como ésta había declarado contra él si los hechos que había testificado no fuesen ciertos.

"Con respecto de lo que había ocurrido en la Central Leonor, también sostenemos que las pruebas negativas de la defensa no pueden prevalecer a las declaraciones claras y categóricas de los testigos del gobierno Dominador Gempasala y Francisco Gicano. Estos afirmaron que cuando la patrulla llegó a dicha central los soldados japoneses bajaron de sus trucks, se esparcieron y empezaron a disparar a los que entonces se habían reunido en la central para recoger azúcar. También declararon de que el acusado fué el que ejecutó directamente al occiso Porfirio de la Peña, cuya ejecución se llevó a cabo en la forma y manera como se ha relatado arriba. El acusado dijo que sus relaciones con los testigos de cargo Dominador Gempasala y Francisco Gicano no eran muy cordiales puesto que antes del suceso de autos éstos dos últimos trabajaban en el 'Boiling Department' de la central mientras que él trabajaba en el 'Milling Department' de la misma central y que hubo disgustos entre los obreros que trabajaban, en ambos departamentos. Entendemos, sin embargo, que dichos disgustos aunque fuesen ciertos, no fueron suficientes motivos para que los referidos testigos declaren falsamente contra el acusado en un asunto sumamente grave, como es el caso presente. Nos parece muy difícil, sino imposible, que los referidos testigos hayan podido inventar los diferentes hechos que habían declarado si los mismos fuesen falsos y que ellos no los hayan visto, como así pretende la defensa. Conste, que el acusado fué un tiempo aparcerero de la testigo Petra Barrameda y fué compañero de trabajo del testigo Servillano Abecendario, cuyas circunstancias afectan naturalmente a la credibilidad de dichos testigos."

In conclusion, we find the guilt of the appellant established beyond reasonable doubt. We agree, however, with his counsel and the Solicitor General that the trial court erred in convicting the accused of treason with homicide. In the first place, the information charges only the crime of treason. In the second place, altho there was at least one killing, namely, that of Porfirio de la Peña for which the accused may clearly be held responsible, the crime of homicide or murder is and must be regarded as included in that of treason. This point has already been decided by this Court in several cases among them those of *People vs. Eduardo Prieto alias Eddie Valencia* (L-399, 45 Off. Gaz., 3329), and *People vs. Pablo Labra* (L-886, 46 Off. Gaz., [Supp. No. 1], 159.

As to the killing of the people at Central Leonor, numbering from 20 to 25 men, when the Japanese soldiers opened fire, we are not prepared to say that the defendant could be held responsible for the said killing. Of course, he formed part of the patrol as a driver. There is no showing however that he knew that the Japanese soldiers were going on a shooting spree at Central Leonor. Neither is it shown that he took a direct part in it, or that he fired a single shot. Anyway, whether or not we hold him responsible for the mass killing, will not affect the result and the decision in this case.

Although the appellant may well be sentenced to death because the treason committed was aggravated by killing, nevertheless, because of lack of sufficient votes to impose

this extreme penalty, the sentence of death is hereby commuted to life imprisonment. In all other respects the decision appealed from is hereby affirmed with costs against the appellant.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Judgment modified.

[No. L-2156. Enero 31, 1950]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* PEDRO ANTONIO (*alias* FEDERICO ANTONIO, *alias* PEDRING), acusado y apelante.

DERECHO PENAL; TRAICIÓN; AYUDA A LOS INVASORES EN LA SUPRESIÓN DE LA GUERRILLA.—Todo cuanto ha hecho el acusado en los casos citados no es de uno que está obrando por miedo. Su actuación con ínfulas de dominador tenía por fin impresionar al público para hacerle comprender que no debía ayudar a los guerrilleros si no quería ser maltratado. En síntesis, el acusado ayudó a los invasores en la supresión de la guerrilla, con infracción del artículo 114 del Código Penal Revisado.

APELACIÓN contra una sentencia del Tribunal del Pueblo.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Domingo P. Dizon en representación del apelante.

El Procurador General Sr. Félix Bautista Angelo y *el Procurador Sr. Pacífico P. de Castro* en representación del Gobierno.

PABLO, M.:

Pedro Antonio fué sentenciado por el delito de traición a reclusión perpetua con las accesorias, a pagar una multa de ₱10,000 y las costas. Contra esta decisión apeló.

Las pruebas en autos establecen que el acusado en 15 de Julio de 1944 con seis soldados japoneses y dos policías militares también japoneses, llegaron al mercado público de Balanga, Bataan, y a su indicación, tres soldados se pusieron de guardia en una puerta y otros tres en la otra del mercado para impedir la salida de cualquier persona. El acusado y los dos policías militares ordenaron a los varones que se pusieran en fila. De la línea formada, el acusado separó a seis por ser de la guerrilla. Inmediatamente dicho acusado y los dos policías militares comenzaron a darles bofetadas y garrotazos. A los que caían el suelo, se les daban puntapiés. Después de ser maltratados en público—por la sola indicación del acusado de que eran guerrilleros—los seis hombres fueron maniatados y conducidos al cuartel del ejército japonés. Apolinar Rosete, Marcelo Austria y Carlos Ramos son los que testificaron sobre estos hechos. Carlos Ramos, que era guerrillero, y, por orden de

su comandante, simulaba ser jornalero para enterarse de las actividades de los japoneses y de los que les ayudaban, presencié la decapitación por el acusado de uno de Malabon por medio de un sable y la ejecución de otro, también de Malabon, por un soldado japonés con bayoneta calada. La ejecución tuvo lugar al siguiente día, en el solar trasero del edificio de la escuela en el barrio Talisay, Balanga, Bataan.

El 14 de Diciembre de 1944, entre las 9 y 10 de la mañana, el acusado, con cuatro secretas y ocho soldados japoneses, fueron a la casa de Miguel Banco, que era un guerrillero, en donde encontraron a Rómulo Tuason. Porque ni el uno ni el otro pudo dar contestación satisfactoria del paradero de Conrado Banco, a quien buscaban por ser guerrillero, fueron maltratados a bofetadas y puntapiés. Miguel Banco fué arrastrado hasta el arroyo en el barrio de Tenejeros, y le sometieron a un rígido *water-cure*. Al recobrar su sentido, Miguel Banco estaba ya sobre un "lancape." Algún tiempo después pasó por casualidad José Banco, hermano de Miguel, en carromata, y al reconocerle, el acusado dijo a sus compañeros: "Aquél es José Banco." Con esto le detuvieron, y ya porque no podía o que no quería dar cuenta del paradero de Conrado, el acusado le maltrató y después le condujo, con las manos atadas, como a Miguel, al cuartel, en donde ambos hermanos permanecieron detenidos y sin recibir alimento. Una tarde el acusado sacó a José Banco del calabozo y fuera del edificio fué investigado y maltratado. Desde entonces, sus hermanos ya no le volvieron a ver. Le habrían matado, como mataron a muchos.

A fines del mes de Diciembre de 1944, Ricardo Villegas se despertó por el ruido que se hacía en la puerta de su casa situada en Balanga, Bataan. Al abrirla, encontró al acusado y a tres soldados japoneses. Al verle, el acusado le maniató diciéndole que le arrestaban por ser guerrillero. Le llevaron al cuartel pasando antes por la casa de los padres del detenido en donde arrestaron a sus cuñados Ceferino de León y Mariano Navarro. Después de maniatar a estos dos, se dirigieron a la casa de su primo Ciriaco Paguio a quien también ataron las manos, y todos los cuatro fueron conducidos al cuartel. Ricardo Villegas fué maltratado por el acusado ante el Capitán del Kempei porque no quería confesar que era guerrillero. Los testigos de este cargo son Ricardo Villegas y Ceferino de León.

La defensa del acusado contra el primer cargo es una coartada. Alega que en 11 de Julio de 1944 estaba en su casa en la Isla de Balut en Tondo, Manila, porque se celebraba el primer aniversario de la muerte de su difunto padre, y no podía estar en Balanga. Como el suceso tuvo lugar el 15, no hay ninguna incompatibilidad entre su presencia en Manila en 11 de Julio y su presencia en Balanga en los días posteriores, especialmente en 15.

En cuanto al arresto de José Banco, el acusado admite que él informó a sus compañeros soldados japoneses que el que pasaba era José Banco, hermano de Miguel, y que si lo había hecho era por miedo porque había ya sido maltratado antes; que si se hubiera callado, los japoneses hubieran podido facilmente identificarle porque su cara se asemejaba a la de Miguel que estaba acostado sobre el "lancape." Suponiendo—dice la defensa—que la carromata hubiera parado, los japoneses hubieran podido identificarle facilmente, el acusado irremisiblemente hubiera sido condenado por no haberles indicado a José Banco. Esta defensa es insostenible. El acusado no solamente informó que el que estaba en la carromata era hermano de Miguel; obró más de lo necesario: arrestó a José, le dió bofetadas, y le maniató. No se puede creer, por lo que ha hecho, que haya obrado por miedo irresistible.

El acusado niega haber maltratado a Ricardo Villegas. No hemos encontrado en el expediente ningún motivo para creer que este testigo haya declarado en falso. Y admitiendo—arguye le defensa—que el acusado haya dado bofetadas a algunas personas, ¿demuestra ello adhesión al enemigo? Si no fuera más que una bofetada, no sería justo concluir que él haya ayudado a los japoneses; pero son varios los actos que él ejecutó. Ayudó a los japoneses a arrestar a los guerrilleros en el mercado, a maltratarles, maniatarles y conducirles al cuartel; ayudó a los soldados japoneses a martirizar a Miguel Banco y Rómulo Tuason porque no podían decir el paradero de Conrado Banco a quien se tenía por guerrillero. El acusado indicó a los japoneses que el que estaba en la carromata era José Banco, hermano de Miguel, y por no dar contestación satisfactoria a sus preguntas sobre Conrado, fué abofeteado, maniatado y llevado al cuartel. Al día siguiente, el acusado maltrató otra vez a José, y desde entonces ya desapareció. Todo cuanto ha hecho el acusado en los casos citados no es de uno que está obrando por miedo. Su actuación con ínfulas de dominador tenía por fin impresionar al público para hacerle comprender que no debía ayudar a los guerrilleros si no quería ser maltrato. En síntesis, el acusado ayudó a los invasores en la supresión de la guerrilla, con infracción del artículo 114 del Código Penal Revisado.

Se confirma la decisión apelada con costas.

Moran, Pres., Ozaeta, Parás, Bengzon, Padilla, Tuason, Montemayor, Reyes, y Torres, MM., están conformes.

Se confirma la sentencia.

[No. L-2196. Enero 31, 1950]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra*
PEDRO CAPUA, acusado y apelante

PROCEDIMIENTO CRIMINAL, REGLAS DE; PRUEBAS; TESTIMONIO DE UN TESTIGO; REQUISITOS PARA QUE MEREZCA CRÉDITO.—Para que el testimonio de un testigo merezca crédito es indispensable que no

sea incompatible con sus otras declaraciones prestadas en otras ocasiones sobre el mismo hecho.

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Pangasinán. De los Santos, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Sres. Ignacio Castillo, Marcelino M. Bautista y Teofilo Cabrera en representación del apelante.

El Primer Procurador General Auxiliar Sr. Roberto A. Gianzon y el Procurador Sr. José G. Bautista en representación del Gobierno.

PABLO, M.:

A eso de las diez de la noche del 24 de Marzo de 1947, unas ocho personas, todas armadas, se acercaron a la casa de Ildefonso Cacho en el barrio de Asin, del municipio de Malasiqui, Pangasinán, y uno de ellos, el acusado, subió hasta el balcón, y como viera a través de la puerta entreabierta que los habitantes estaban aún despiertos, bajó inmediatamente y ordenó en tagalo que los hombres bajasen de la casa y que apagasen la luz. Marcelina Bataan dijo que no comprendía lo que decía el acusado, por eso, éste repitió la orden en ilocano. Como los moradores no cumplieron la orden, los asaltantes dispararon varios tiros contra la casa. Inmediatamente después, el acusado y un compañero subieron e intentaron abrir la puerta, empujándola; pero como estaba ya cerrada, bajaron ordenando otra vez el acusado que bajasen los hombres y que apagasen la luz. Dispararon varios tiros otra vez, y el acusado, con un compañero, subió de nuevo al balcón e intentó romper la puerta con la culata de su rifle. Como no consiguieran su deseo bajaron otra vez, e inmediatamente una andanada de tiros de fusil descargaron los asaltantes contra la casa. Se marcharon después. Hilarion Padilla, mientras se disparaban tiros, saltó por la ventana y se dirigió a la casa del teniente del barrio, Juan de la Cruz, para dar cuenta del suceso. El teniente fué quien dió cuenta del suceso a las autoridades del municipio. Valeriana Cacho e Ildefonso Cacho, la primera hija del segundo, fueron llevados al hospital provincial en Dagupan en donde aquélla, a los cinco minutos de llegar, falleció por la herida producida por un proyectil que atravesó su brazo izquierdo fracturando el húmero, y otra herida causada por una bala que le atravesó la cavidad torácica, fracturando la quinta costilla. Ildefonso Cacho, después de recibir tratamiento médico por la herida en la pierna izquierda, volvió a su casa.

Las pruebas sobre las cuales basa el Juzgado *a quo* estas conclusiones de hecho son la presunta confesión del acusado, Exhibit A, y las declaraciones de los testigos Ildefonso Cacho e Hilarion Padilla: estos dos testigos afirmaron en el día de la vista que el acusado fué el mismo que subió al balcón con un compañero; y fué quien ordenó que bajasen

los hombres y apagasen la luz, y por eso, el Juzgado *a quo* condenó al acusado a la pena de muerte, a indemnizar a los herederos de Valeriana Cacho en la cantidad de ₡8,000 y a pagar las costas. El acusado apeló.

La cuestión a resolver es si la presunta confesión y las declaraciones en la vista de la causa de Ildefonso Cacho y otros son suficientes pruebas para una condena de muerte.

Estudiando el expediente, encontramos los siguientes datos:

En 25 de Marzo, el Juez de Paz, el Jefe de Policía, el Sargento de Policía, dos policías municipales y el inspector de sanidad del municipio de Malasiqui, se constituyeron en la casa del suceso y en sus averiguaciones Marcelina Bataan e Hilarion Padilla, esposa y yerno de Ildefonso Cacho, que fué herido, y Tomasa de Tarte dijeron que no pudieron conocer a las personas que habían subido al balcón porque estaba oscura la noche; pero tenían sospechas de que Pedro Capua había sido quien subió y ordenó que bajasen los hombres y que apagasen la luz porque era el mismo hombre que a las diez de la mañana poco más o menos del día anterior fué a dicha casa manifestando su deseo de comprar manga; que en las conversaciones llegó a saber que Valeriana Cacho había recibido ₡2,000 y que comió con ellos al mediodía. La falta de identificación del acusado indudablemente fué el motivo por qué el Jefe de Policía no presentó ninguna denuncia. No tenía datos, no sabía quiénes eran los asaltantes.

En 25 de Marzo, Hilarión Padilla dió también cuenta del suceso al capitán Hidalgo, de la Policía Militar destacado en Urdaneta. Por orden de éste, el sargento Ramos se constituyó en la casa para hacer investigaciones; pero Ildefonso Cacho, el herido en la pierna, su esposa y su yerno, y Tomasa de Tarte dijeron que no habían conocido a los autores del crimen, aunque sospechaban que el acusado fué quién subió al balcón por las razones que ya transmitieron a los primeros investigadores.

Al siguiente día, 26 de Marzo, el sargento y tres soldados, con los datos obtenidos el día anterior, fueron al barrio de Baliñgew, Sta. Bárbara, quedándose el sargento en la casa del teniente mientras sus soldados iban en busca del acusado. A eso de las tres de la tarde del mismo día, los soldados llegaron con el acusado, e inmediatamente todos, con el sargento, fueron otra vez a la casa de autos para practicar otra investigación; pero como el acusado, a pesar de habersele sumergido la cabeza en agua diez veces, no admitía ser responsable del delito, el sargento dijo a los dueños de la casa: "He hecho todo lo mejor que puedo, pero el acusado no quiere decir nada. Mejor sería que ustedes declaren que le han reconocido a él aquella noche." A eso de las diez de la noche, el sargento y sus soldados llevaron al acusado a su cuartel en Urdaneta en donde fué maltratado hasta

que, no pudiendo sobrellevar tanto sufrimiento, pues ni le dieron comida ni agua, terminó por conformarse con firmar la confesión.

En 2 de Abril fué cuando el sargento Ramos presentó en el Juzgado de Paz de Malasiqui la denuncia correspondiente juntamente con la supuesta confesión del acusado y las declaraciones juradas de Hilarión Padilla, Marcelina Bataan y Tomasa de Tarte con fecha 2 del mismo mes. En el mismo día el Juez de Paz expidió la orden de arresto del acusado que ya había sido sacado de su casa desde el 26.

En 8 de Abril, el Capitán Hidalgo pidió personalmente el sobreseimiento de la denuncia contra todos los acusados excepto en cuanto al acusado Pedro Capua. Este renunció a la investigación preliminar y pidió que se remitiese el expediente al Juzgado de Primera Instancia.

El sargento declaró que el acusado firmó su confesión ante el Juez de Paz de Urdaneta y en presencia de él y del soldado Aquino. Eso no es verdad, porque el mismo Juez de Paz declaró que la confesión estaba ya firmada por el acusado, el sargento y el soldado Aquino cuando le llevaron a su oficina para el juramento. La tinta usada por el Juez de Paz de Urdaneta es distinta de la tinta usada por el acusado, el sargento y el soldado. Estas tres firmas han sido arrojadas indudablemente en la bartolina del cuartel y no en el Juzgado de Paz.

También ha declarado el sargento que puso al acusado a disposición de la policía municipal de Malasiqui en 27 de Marzo, y sólo le sacó el día 31 de Marzo para ser llevado ante el Juez de Paz de Urdaneta para firmar la confesión. Esto no es verdad, porque en el *blotter* de la policía municipal de Malasiqui no consta que el acusado haya entrado en la cárcel municipal desde el 27 de Marzo, sino solamente en 2 de Abril, día en que se presentó la denuncia. El *blotter* y las declaraciones del jefe y del sargento de policía de Malasiqui merecen más credito que la declaración del sargento Ramos.

Si es verdad—como declaró el sargento Ramos—que el acusado ha estado arrestado en poder de la policía municipal de Malasiqui y que confesó su culpabilidad voluntariamente, es extraño que no se le haga hecho firmar tal confesión en el mismo día o en los días subsiguientes ante el Juez de Paz de Malasiqui, cuya oficina estaba en el mismo edificio. ¿Qué necesidad tenía el sargento Ramos de dejar pasar cuatro días para hacer firmar al acusado su confesión ante el Juez de Paz de Urdaneta, si voluntariamente había confesado ya su culpabilidad en Malasiqui? ¿Y qué necesidad tenía el sargento Ramos de llevar al acusado al cuartel de la Policía Militar en Urdaneta y retenerle allí desde la noche del 27 hasta el 31 de Marzo, si no para arrancarle—como sostiene el acusado—la confesión deseada? Si solamente el 2 de Abril fué cuando el sargento Ramos mandó firmar

las declaraciones juradas de los tres testigos Hilarión Padilla, Marcelina Bataan y Tomasa de Tarte haciendo constar que habían conocido al acusado, ello confirma la teoría de la defensa de que en la primera y segunda vez (en 26 y 27 de Marzo) que el sargento estuvo en la casa del crimen aquéllos no habían dicho aun que habían reconocido al acusado, y por eso el sargento les sugirió, después del fracaso del *water cure*, que declarasen que le reconocieron en la noche del crimen.

Si Hilarión Padilla, Marcelina Bataan y Tomasa de Tarte habían dicho de veras al sargento Ramos en 26 de Marzo que reconocieron al acusado en la noche del crimen, el sargento hubiera presentado la denuncia correspondiente nombrándoles como testigos, y no se hubiera molestado en ir al siguiente día con sus tres soldados a un barrio de Sta. Bárbara para arrestar al acusado; no hubiera tenido necesidad de sumergir la cabeza del acusado diez veces en el agua; y no hubiera sugerido a los testigos, después de infructuosos esfuerzos, que "mejor será que declaren que han reconocido al acusado aquella noche." Todo esto demuestra que los testigos de la acusación solamente declararon en 2 de Abril y en el día de la vista y no antes, que el acusado fué el que subió al balcón en la noche del tiroteo.

Las declaraciones de los testigos de la acusación en 2 de Abril (affidavits) y en el día de la vista (16 de Septiembre de 1947) que son incompatibles con sus declaraciones en 25, 26 y 27 de Marzo, prestadas durante las investigaciones hechas inmediatamente después del suceso que tuvo lugar en 24, no merecen seria consideración. Para que el testimonio de un testigo merezca crédito es indispensable que no sea incompatible con sus otras declaraciones prestadas en otras ocasiones sobre el mismo hecho.

Se revoca la sentencia apelada con las costas de oficio. Póngase en libertad al acusado.

Moran, Pres., Ozaeta, Parás, Bengzon, Padilla, Tuason, Montemayor, Reyes, y Torres, MM., están conformes.

Se revoca la sentencia.

[No. L-2216. January 31, 1950]

DEE C. CHUAN & SONS, INC., petitioner, *vs.* THE COURT OF INDUSTRIAL RELATIONS, CONGRESS OF LABOR ORGANIZATIONS (CLO), KAISAHAN NG MGA MANGGAGAWA SA KAHAY SA PILIPINAS and JULIAN LOMANOG AND HIS WORK-CONTRACT LABORERS, respondents.

1. CONSTITUTIONAL LAW; ALIEN; WHEN ALIEN MAY QUESTION LEGALITY OF STATUTE OR COURT ORDER.—An alien may question the constitutionality of a statute (or court order) only when and so far as it is being, or is about to be, applied to his disadvantage.

2. COURT OF INDUSTRIAL RELATIONS; POWER OR AUTHORITY TO IMPOSE CONDITION AS TO NATIONALITY OF LABORERS TO BE EMPLOYED.—Under Commonwealth Act No. 103 the Court of Industrial Relations may specify that a certain proportion of the additional laborers to be employed should be Filipinos, if such condition, in the court's opinion, is necessary or expedient for the purpose of settling disputes, preventing further disputes or doing justice to the parties.
3. CONSTITUTIONAL LAW; COURT OF INDUSTRIAL RELATIONS' POWER TO IMPOSE CONDITION AS TO NATIONALITY OF LABORERS TO BE EMPLOYED; CASE AT BAR.—The order of the Court of Industrial Relations specifying that certain portion of additional laborers to be employed should be Filipinos, does not constitute an unlawful intrusion into the sphere of legislation; neither is it an attempt to lay down a public policy of the State nor to settle a political question. Such order of the court falls within the legitimate scope of its jurisdiction; it does not formulate a policy and it is not political in character. It is not a permanent all-embracing regulation. It is a compromise and emergency measure applicable only in this case and calculated to bridge a temporary gap and to adjust conflicting interests in an existing and menacing controversy.

PETITION to review on certiorari an order of the Court of Industrial Relations.

The facts are stated in the opinion of the court.

Quisumbing, Sycip & Quisumbing for petitioner.

Lazatin & Caballero for respondents.

Arsenio I. Martinez for the Court of Industrial Relations.

TUASON, J.:

Dee C. Chuan & Sons, Inc. assails the validity of an order of the Court of Industrial Relations. The order, made upon petitioner's request for authority to hire "about twelve (12) more laborers from time to time and on a temporary basis," contains the proviso that "the majority of the laborers to be employed should be native." The petition was filed pending settlement by the court of a labor dispute between the petitioner and Kaisahan Ng Mga Manggagawa sa Kahoy sa Filipinas.

At the outset, the appellant takes exception to the finding of the court below that Dee C. Chuan & Sons, Inc., is capitalized with foreign capital and managed by person of foreign descent. This question has little or no bearing on the case and may well be passed over except incidentally as a point of argument in relation to the material issues.

It is next said that "The Court of Industrial Relations cannot intervene in questions of selection of employees and workers so as to impose unconstitutional restrictions," and that "The restriction of the number of aliens that may be employed in any business, occupation, trade or profession of any kind, is a denial of the equal protection of the laws." Although the brief does not name the persons who are supposed to be denied the equal protection of the

laws, it is clearly to be inferred that aliens in general are in petitioner's mind. Certainly, the order does not, directly or indirectly, immediately or remotely, discriminate against the petitioner on account of race or citizenship. The order could have been issued in a case in which the employer was a Filipino. As a matter of fact the petitioner insists that 75 per cent of its shares of stock are held by Philippine citizens, a statement which is here assumed to be correct.

But is petitioner entitled to challenge the constitutionality of a law or an order which does not adversely affect it, in behalf of aliens who are prejudiced thereby? The answer is not in doubt. An alien may question the constitutionality of a statute (or court order) only when and so far as it is being, or is about to be, applied to his disadvantage. (16 C. J. S. 157 *et seq.*) The prospective employees whom the petitioner may contemplate employing have not come forward to seek redress; their identity has not even been revealed. Clearly the petitioner has no case in so far as it strives to protect the rights of others, much less others who are unknown and undetermined. U. S. *vs.* Wong Kum Ark, 169 U. S., 649; *Truax vs. Reich*, 239 U. S., 39; 60 Law ed., 131, and other American decisions cited do not support the petitioner for the very simple reason that in those cases it was the persons themselves whose rights and immunities under the constitution were being violated that invoked the protection of the courts.

The petitioner is within its legitimate sphere of interest when it complains that the appealed order restrains it in its liberty to engage the men it pleases. This complaint merits a more detailed examination.

That the employer's right to hire labor is not absolute has to be admitted. "This privilege of hiring and firing *ad libitum* is, of course, being subjected to restraints today." Statutes are cutting in on it. And so does Commonwealth Act No. 103. The regulations of the hours of labor of employees and of the employment of women and children are familiar examples of the limitation of the employer's right in this regard. The petitioner's request for permission to employ additional laborers is an implicit recognition of the correctness of the proposition. The power of the legislature to make regulations is subject only to the condition that they should be affected with public interest and reasonable under the circumstances. The power may be exercised directly by the law-making body or delegated by appropriate rules to the courts or administrative agencies.

We are of the opinion that the order under consideration meets the test of reasonableness and public interest. The passage of Commonwealth Act No. 103 was "in conformity with the constitutional objective and * * * the historical

fact that industrial and agricultural disputes have given rise to disquietude, bloodshed and revolution in our country." (*Antamok Goldfields Mining Co. vs. Court of Industrial Relations*, 40 Off. Gaz., 8th Supp., 173.) "Commonwealth Act No. 103 has precisely vested the Court of Industrial Relations with authority to intervene in all disputes between employers and employees or strikes arising from differences as regards wages, compensation, and other labor condition which it may take cognizance of." (*Central Azucarera de Tarlac vs. Court of Industrial Relations*, 40 Off. Gaz., 3rd Supp., 319, 324.) Thus it has jurisdiction to determine the number of men to be laid off during off-season. By the same token, the court may specify that a certain proportion of the additional laborers to be employed should be Filipinos, if such condition, in the court's opinion, "is necessary or expedient for the purpose of settling disputes, preventing further disputes or doing justice to the parties."

The order in question has that specific end in view. In parallel vein the court observed: "Undoubtedly, without the admonition of the Court, nothing could prevent petitioner from hiring purely alien laborers, and there is no gainsaying the fact that further conflict or dispute would naturally ensue. To cope with this contingency, and acting within the power granted by the organic law, the court, believing in the necessity and expediency of making patent its desire to avoid probable and possible further misunderstanding between the parties, issued the order."

We are not prepared to declare that the order is not conducive to the aim pursued. The question is a practical one depending on facts with which the court is best familiar. The fact already noted should not be lost sight of—that there is a pending strike and, besides, that the employment of temporary laborers was opposed by the striking employees and was the subject of a protracted hearing.

We can not agree with the petitioner that the order constitutes an unlawful intrusion into the sphere of legislation, by attempting to lay down a public policy of the state or to settle a political question. In the first place, we believe, as we have already explained, that the court's action falls within the legitimate scope of its jurisdiction. In the second place, the order does not formulate a policy and is not political in character. It is not a permanent, all-embracing regulation. It is a compromise and emergency measure applicable only in this case and calculated to bridge a temporary gap and to adjust conflicting interests in an existing and menacing controversy. The hiring of Chinese laborers by the petitioner was rightly considered by the court likely to lead the parties away from the reconciliation which it was the function of the court to effectuate.

As far as the petitioner is concerned, the requirement that majority of the laborers to be employed should be Filipinos is certainly not arbitrary, unreasonable or unjust. The petitioner's right to employ labor or to make contract with respect thereto is not unreasonably curtailed and its interest is not jeopardized. We take it that the nationality of the additional laborers to be taken in is immaterial to the petitioner. In its application for permission to employ twelve temporary laborers it expressly says that these could be Filipinos or Chinese. On the face of this statement, assuming the same to be sincere, the petitioner's objection to the condition imposed by the court would appear to be academic and a trifle.

We should not close without adverting to the fact that the petitioner does not so much as pretend that the hiring of additional laborers is its prerogative as a matter of right. It seems to be conceded that during the pendency of the dispute the petitioner could employ temporary laborers only with the permission of the Court of Industrial Relations. The granting of the application thus lies within the sound judgment of the court, and if the court could turn it down entirely, as we think it could, its authority to qualify the permission should be undeniable, provided only that the qualification is not arbitrary, against law, morals, or established public policy, which it is not; it is an expedient and emergency step designed to relieve petitioner's own difficulties. Also important to remember is that it is not compulsory on petitioner's part to take advantage of the order. Being a permittee petitioner is the sole judge of whether it should take the order as it is, or leave it if it does not suit its interest to hire new laborers other than Chinese.

The order appealed from is affirmed with costs to this appeal against the petitioner-appellant.

Moran, C. J., Pablo, Bengzon, Padilla, and Torres, JJ., concur.

OZAETA, J., with whom concur PARÁS, MOMTEMAYOR, and REYES, JJ., dissenting:

During the trial of an industrial dispute between the petitioner and the respondent labor union, the former applied to the Court of Industrial Relations for authority "to hire about twelve more laborers from time to time and on a temporary basis, to be chosen by the petitioner from either Filipinos or Chinese." The court granted the authority applied for but imposed as a condition that the majority of the twelve new laborers to be hired "should be native and only a nominal percentage thereof alien." In imposing such condition the court said:

"The hiring of laborers who are not native or Filipino should be discouraged, as it is being discouraged by this court. In these

critical moments of unemployment, any competition of alien and native labor would be destructive of our Nation that is in the making. By the act of God, this nation is the Philippines, her soil is the patrimony of the Filipino people, and in this Philippine soil the Filipino laborers must have priority and preference. No capitalistic management can violate this unwritten law, unless it wants to court trouble and conflict. In the hiring, therefore, of laborers, it is the opinion of this court that management, in employing aliens, should be prudent and cautious and should, as much as possible, employ only a small percentage thereof limited to those absolutely necessary and confidential."

The power of the Court of Industrial Relations to impose such condition as to limit the authority of the employer to hire laborers other than Filipinos is challenged by the petitioner. "The petitioner is within its legitimate sphere of interest when it complains that the appealed order restrains it in its liberty to engage the men it pleases," says the majority opinion, and we add—"regardless of race or nationality." It is true that no alien laborer who may be adversely affected by the order has been made a party herein. Under the circumstances of the case he could not be expected to have intervened in the incident which gave rise to the order complained of. But his intervention is not necessary in order to determine whether or not the Court of Industrial Relations is empowered by law to impose the condition above mentioned. If the court has no power to discriminate against a certain class of laborers on account of their race or nationality, it has no power to impose the condition in question, and the employer has legitimate right to complain against such imposition.

The Court of Industrial Relations impliedly admits the nonexistence of any statute providing that Filipino laborers must be preferred over aliens; but it claims or adopts an "unwritten law" to that effect and says that "no capitalistic management can violate this unwritten law, unless it wants to court trouble and conflict." Who made such unwritten law? Certainly the Congress of the Philippines, the only entity authorized by the Constitution to make laws, and which does not promulgate unwritten laws, did not do so. The court, therefore, cannot take cognizance of, and much less apply, such supposed unwritten law.

It is sheer usurpation of legislative power for the court to enact or make laws. Its power is confined to interpreting and applying the laws enacted by the legislature.

The case of *Truax vs. Raich* (60 Law. ed., 131), which was decided by the Supreme Court of the United States on November 1, 1915, is of pertinent and persuasive application to the question at issue in that, in our opinion, it emphasizes the utter lack of power of the court to impose the condition here complained of; for in said case the Supreme Court of the United States ruled that the Legislature of the State of Arizona could not validly

enact a law similar to the supposed unwritten law which the Court of Industrial Relations has conceived and has tried to enforce. The law involved in said case pertinently reads as follows:

"SEC. 1. Any company, corporation, partnership, association or individual who is, or may hereafter become, an employer of more than five (5) workers at any one time, in the state of Arizona, regardless of kind or class of work, or sex of workers, shall employ not less than (80) per cent qualified electors or native-born citizens of the United States or some subdivision thereof.

"SEC. 2. Any company, corporation, partnership, association or individual, their agent or agents, found guilty of violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not less than one hundred (\$100) dollars, and imprisoned for not less than thirty (30) days."

Mike Raich, a native of Austria and an inhabitant of the State of Arizona, but not a qualified elector, was employed as a cook by William Truax in his restaurant, where he had nine employees, of whom seven were neither native-born citizens of the United States nor qualified electors. After the passage of said law Raich was informed by his employer that because of its requirements and because of the fear of the penalties that would be incurred in case of its violation, he would be discharged. Thereupon Raich sued Truax and the Attorney General of Arizona to enjoin them from enforcing the law on the ground that it was unconstitutional because it denied him the equal protection of the laws. Both the District Court and the Supreme Court of the United States upheld his contention. The court said that the complainant was entitled under the Fourteenth Amendment to the equal protection of the laws of Arizona. "These provisions," said the court, "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws. * * * The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the people of the state, the enjoyment of which may be limited to its citizens as against both aliens and the citizens of other states." The court said further:

"It is sought to justify this act as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction. But this admitted authority, with the broad range of legislative discretion that it implies, does not go so far as to make it possible for the state to deny to lawful inhabitants, because of their race or nationality, the ordinary means of earning a livelihood. It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was

the purpose of the Amendment to secure. . . . If this could be refused solely upon the ground of race or nationality, the prohibition of the denial to any person of the equal protection of the laws would be a barren form of words. It is no answer to say, as it is argued, that the act proceeds upon the assumption that 'the employment of aliens, unless restrained, was a peril to the public welfare.' The discrimination against aliens in the wide range of employments to which the act relates is made an end in itself, and thus the authority to deny to aliens, upon the mere fact of their alienage, the right to obtain support in the ordinary fields of labor, is necessarily involved."

Our own Constitution contains a provision similar to the Fourteenth Amendment to the Constitution of the United States. Section 1 of Article III provides:

"No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

It is patent that if the lawmaking body itself cannot validly enact the supposed unwritten law conceived or adopted by the lower court, much less could the latter do so.

Section 13 of Commonwealth Act No. 103, invoked by the trial court and by the majority of this court as authorizing the imposition of the discriminatory condition contained in the order appealed from, reads as follows:

"SEC. 13. *Character of the award.*—In making an award, order or decision, under the provisions of section four of this Act, the Court shall not be restricted to the specific relief claimed or demands made by the parties to the industrial or agricultural dispute, but may include in the award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further industrial or agricultural disputes."

As correctly stated by Judge Lanting of the lower court in his dissenting opinion:

"The reference in the resolution of the majority to section 13 of Commonwealth Act No. 103, authorizing this Court to include in its awards, orders or decisions 'any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further * * * disputes', is far-fetched. This provision certainly does not authorize this Court to go beyond its prescribed powers and issue an order which grossly violates the fundamental law. More specifically, it cannot make any ruling which will produce the effect of discriminating against and oppressing a person or class of persons and deny them the equal protection of the laws, aside from curtailing their individual freedom and their right to live."

As a matter of fact the respondent labor union "manifested its conformity to the hiring of additional laborers, provided that it be consulted by the petitioner and that it be given the privilege of recommending the twelve new laborers that are to be hired." And Judge Roldan in his order overruled that proposition by saying: "The

stand taken by the respondent labor union is not correct, because it attempts to encroach upon the prerogative of the company to determine and adopt its own policy in the selection of its employees and workers, and the Court should only intervene in questions of this nature when there is discrimination or retaliation on the part of the company, which has not been proven or even alleged in the case at bar (*Manila Trading & Supply Co. vs. Judge Francisco Zulueta et al.*, G. R. No. 46853; *Manila Chauffeurs League vs. Bachrach Motor Co.*, G. R. No. 49138; *Pampanga Bus Co. vs. Pampanga Bus Co. Employees' Union*, G. R. No. 46739; *National Labor Union vs. San Miguel Brewery*, CIR case No. 26-V, June 12, 1947)."

Thus the Court of Industrial Relations itself correctly held that the respondent labor union has no right to encroach upon the prerogative of the company to determine and adopt its own policy in the selection of its employees and workers, and that the court itself should not intervene in such selection because there was no proof of discrimination or retaliation on the part of the company. Yet in the dispositive part of its order the court not only intervenes in such selection but compels the company to discriminate against a certain class of laborers. The inconsistency and illegality of the order appealed from are too patent for argument.

To hold that the Court of Industrial Relations may, under section 13, impose any condition in its order or award in order to prevent further industrial disputes, regardless of whether or not such condition is in violation of law or of the Constitution, is, in our opinion, unthinkable. It goes without saying that industrial disputes must be settled in accordance with law and justice. Suppose that the members of a labor union should demand of an employer that 80 per cent of the new laborers the latter may hire should be Filipinos, or that all of them should be Tagalogs or Ilocanos, and should threaten to declare a strike unless such demand be complied with; would the court be justified in granting such demand under section 13 on the ground that by doing so it would prevent a strike or lockout and settle an industrial dispute? The negative answer can hardly be disputed, since unreasonableness or illegal demands should not be countenanced by the court. Yet the affirmance by this Court of the order appealed from in effect authorizes the Court of Industrial Relations hereafter to commit such arbitrariness.

For the foregoing reasons, we vote to modify the appealed order by eliminating therefrom the discriminatory condition in question.

Order affirmed.

[No. L-2235. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
URBANO MARASIGAN, defendant and appellant

1. CRIMINAL LAW; TREASON; EVIDENCE; WEIGHT; NUMBER OF WITNESSES.—The findings of fact of a tribunal of justice are seldom based upon the number of witnesses but rather upon their credibility and the nature and quality of their testimonies.
2. ID.; ID.; MITIGATING CIRCUMSTANCE, LACK OF INSTRUCTION AS.—The mitigating circumstance of lack of instruction may be considered in favor of an accused of the crime of treason when it is proven that he had not gone to and studied in the public schools; that he can neither read nor write English; and that his schooling if it can be so called, was confined to studying and finishing the *caton*, an elementary Spanish reader for beginners.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Manuel A. Concordia for appellant.

Assistant Solicitor General Inocencio Rosal and *Solicitor Martiniano P. Vivo* for appellee.

MONTEMAYOR J.:

Urbano Marasigan is appealing from a decision of the People's Court finding him guilty of treason and sentencing him to *reclusión perpetua* with the accessory penalties prescribed by law, and to pay a fine of ₱10,000, plus costs. Marasigan was charged with treason under four counts—A, B, C, and D but he was found guilty only of count A. A careful review of the evidence establishes beyond reasonable doubt the following facts.

The appellant admitted in open court that he was a Filipino citizen. On or prior to January 21, 1945, Marasigan was a member of the Japanese Military Police in Sariaya, Tayabas (Quezon). He was often seen wearing a Japanese uniform and carrying a rifle and he used to accompany Japanese patrols and raiding parties.

On January 21, 1945, Nicasio Siores was residing in the barrio of Concepcion Banahaw, Sariaya, Tayabas. He lived with his wife Regina Menias, a grown up son named Maximo, and the latter's two kid brothers. In another house within shouting distance, lived another son named Macario and his wife Hilariona Liwag. At the time, both Maximo and Macario were attached to the guerrillas, acting or serving as messengers. About noon of the day in question, Regina happened to be in the house of Macario. A Japanese raiding party composed of Japanese soldiers and several Filipinos belonging to the Japanese Military Police, among them, the appellant, headed by a Japanese captain, approached and surrounded the house of Macario. Marasigan wore a Japanese uniform and carried a rifle.

He shouted to the inmates of the house, ordering all the men to come down. Macario went down his house and was asked by the appellant if he was a guerrilla and upon answering in the negative, he told him to go to the Japanese captain. The patrol, taking Macario with it, proceeded to the house of Nicasio Siore. Regina, curious and fearful of what the raiding party was going to do, especially since it was going in the direction of her house, followed at a distance, trying not to be seen. Arriving at the house of Nicasio the appellant again summoned the male inmates of the house and Nicasio and his son Maximo came down. Upon denying that they were guerrillas, Marasigan told them to go to the Japanese captain for investigation. The captain said that because of his advanced age, Nicasio may stay. Macario and Maximo were taken by the raiding party, of which the appellant formed part, toward the mountains and since then, the two brothers have not been heard from.

About a month thereafter, while Hilariona was nursing her baby inside her house, she heard someone passing by her house and saying in a loud voice: "Woman inside the house, you should not wait for your husband to return because he is already dead. You better offer a prayer for him." Hilariona hurried to the window to find out the source of this doleful news and she saw that it was the appellant Marasigan.

In his defense, the appellant presented seven witnesses besides himself. He claims that he could not have been with the raiding party that arrested Macario and Maximo on January 21, 1945, for the reason that on January 18th of the same month, he was arrested by the Japanese and confined and that he was able to escape from their custody only during the first days of March, 1945; that the alleged false charge for treason was motivated by revenge because while he was being held by the Japanese, Nicasio Siore used to frequent his (Marasigan's) house and courted his wife; that after Marasigan had escaped from the Japanese he took his family, including his wife to a house in the barrio of Concepcion Banahaw preparatory to his fleeing to the mountains; that he left them in said house and went to the mountains to have a conference with the chief of the guerrillas; that during his absence Nicasio Siore came and renewed his courtship of his (defendant's) wife and upon being rejected, he tried to rape her, that upon his return and upon being apprised of the outrage committed upon his wife, he went to the house of Nicasio and challenged him to a fight and then beat him up; and that it was the resentment of this punishment inflicted upon Nicasio that impelled the latter to falsely accuse him of treason.

The People's Court rejected this theory of the defendant and among the reasons given by it, it said that if the

claim of the defendant was true, then it was Marasigan who should feel offended and not Nicasio who was the offender; and that the latter had no reason to take retaliatory measures against him, especially to the extent of accusing him of the serious crime of treason and taking the trouble of taking his wife and daughter-in-law, including another witness from Tayabas to Manila, just to testify at the trial. Moreover, the People's Court found and the evidence supports the finding that about a month before trial of this case, Juana Rios, wife of the appellant went to the house of Hilariona and said that they were cousins, although according to Hilariona they were not in any way related; that Juana asked Hilariona to forget what had happened to her husband and not to testify in court, and that even if she attended the trial and was called to the witness stand, she should say that she had no more interest in the case. The record further shows that before the trial Emiliano Marasigan, father of the defendant, accompanied by one Mariano Vito, went to the house of Nicasio Siores, father of the two brothers Macario and Maximo and pleaded and begged for forgiveness, saying that if Jesus Christ could forgive the sins of men, he (Nicasio) a mortal, could well forgive; that when Nicasio did not grant his plea, Mariano Vito said: "Compadre Nicasio, if you will compromise this matter with us I will be willing to give you ₱100." On this point we quote Nicasio's testimony. "I answered that even if my two sons were here, I would not give a damn to that money, even if you will cover me with money."

Counsel for the appellant contends that inasmuch as there were eight witnesses who testified for the defense, and only four witnesses testified for the prosecution, the numerical superiority should incline the balance of justice in defendant's favor. Unfortunately however, the findings of fact of a tribunal of justice are seldom based upon the number of witnesses but rather upon their credibility and the nature and quality of their testimonies. The lower court found the witnesses for the prosecution more worthy of credit and their testimonies more reasonable and credible. We find no reason for disturbing said findings.

Although we agree with the People's Court that the appellant's guilt has been fully established, we notice that unlike other cases of treason that have come before and been decided by us where the accused, besides helping the enemy by committing overt acts, have either killed or tortured their own countrymen suspected of being guerrillas or possessing firearms, in the present case, although Marasigan accompanied the Japanese raiding party that arrested the two brothers and took them to the mountains where they were presumably killed, there is no evidence that he had taken part in the killing. Neither is it shown

that in effecting the arrest, the defendant had tortured, manhandled or otherwise abused Macario and Maximo. For this reason, we are inclined to be lenient with the appellant. Acting upon the plea of his counsel that the mitigating circumstance of lack of instruction be considered in his favor inasmuch as Marasigan had not gone to and studied in the public schools; that he can neither read nor write English; and that his schooling if it can be so called, was confined to studying and finishing the *caton*, an elementary Spanish reader for beginners, we find this mitigating circumstance in favor of the appellant. We therefore reduce the penalty imposed by the People's Court to seventeen years and four months of *reclusión temporal* and a fine of ₱5,000. In all other respects, the decision appealed from is hereby affirmed, with costs against the appellant.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Judgment modified

[No. L-2237. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
AMADO MENOR, defendant and appellant

CRIMINAL LAW; TREASON; ACCUSED'S PARTICIPATION WITH THE ENEMY IN THE ARREST AND KILLING OF GUERRILLAS.—The appellant's activities in cooperating with the enemy in the arrest, suppression and killing of the members of the underground resistance movement, which had been duly proven in this case, undoubtedly constitute the adherence and giving aid and comfort to the enemy, which violates article 114 of the Revised Penal Code.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the Court.

Florentino M. Guanlao for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Lucas Lacson* for appellee.

TORRES, J.:

Amado Menor was charged before the People's Court with the crime of treason on five counts set forth in the information. He entered a plea of not guilty and the prosecution, having abandoned counts Nos. 1, 3 and 5, submitted evidence in support of counts Nos. 2 and 4 by the testimony of at least two witnesses for each count. The People's Court found him guilty of treason under those counts and, taking into consideration the attendance of the mitigating circumstance of lack of education, sentenced him to 14 years, 8 months and 1 day of *reclusión temporal*, with the accessory penalties of the law, to pay a fine of ₱7,000 and the costs. Amado Menor was likewise credited with one-half of the preventive imprisonment he has undergone.

He appealed from said judgment and, in this instance, his counsel *de oficio* assails the correctness of the judgment of the People's Court by alleging that the evidence adduced by the prosecution does not justify the conviction of the accused of the crime of treason charged in counts Nos. 2 and 4 of the information, and that the conclusion that all the elements of the crime of treason under article 114 of the Revised Penal Code exist in this case, is unfounded, because "only one was even doubtfully proven."

Upon perusal of the record of this case we gather that this appellant, a Filipino citizen, has, according to the prosecution, committed the following acts.

As regards count 2. On December 1, 1944, with the active cooperation of a group of Filipinos, among whom was Amado Menor, the Japanese established a "military cordon" in the barrio of Tipas, municipality of Taguig, Province of Rizal, in order to prevent the inhabitants from leaving the place. They gathered all the inhabitants, particularly the men, and caused them to parade before a group of hooded persons, known as "magic eye." As each person was caused to pass before the "magic eye," the latter, by a nod of the head, indicated to the Japanese whether or not a particular individual was a guerrilla or connected therewith. Those who were not pointed out as guerrillas were sent to the Catholic church and later released, while those who were designated to have connections with the guerrillas were sent to Aglipayan church, maltreated, loaded in trucks and then taken to Fort Santiago in Manila or to other unknown destinations. After this, the group of persons who were classified as guerrillas were never seen or heard from thereafter.

The above facts were testified to by Rosa Salazar, Conrado Bonifacio, Anselmo Eustaquio, Cirila Cruz, Lucila Mañosca, Mateo Gregorio, Avecinia Sumulong, Julita Gregorio, Rosario Nazario, Aluwina Trinidad, Patricia Dingdingbayan, Margarita Bunye, Luis Eustaquio, Antonio Rodriguez, Maria Umali, Rafael Saña, Felicísimo Santos, Felisa Ocampo, Maximo Cruz, and Ricardo Angel. By their testimonies the prosecution has thus overwhelmingly established the charge made by the prosecution in count No. 2 that this defendant, by actively cooperating with and executing the unlawful designs of his Japanese masters, not only adhered to the enemy but with positive acts gave the Japanese aid and comfort in carrying out their plans of destroying the underground resistance movement and thus consolidate their occupation of the country.

The evidence submitted by the prosecution in support of count No. 4 shows that Ernesto Buenviaje, then a guerrilla, on December 30, 1944, came from his mountain hideout to visit his family in the barrio of Sagad, Pasig, Rizal. His wife Mercedes Mendiola warned him that he was being hunted on account of his guerrilla activities,

whereupon Buenviaje and his wife hurriedly left their house and took refuge in the house of their cousin Zacarias, in the barrio of Caniogan, Maybunga, Pasig, Rizal. They had been in that place only a few minutes when the accused Amado Menor, accompanied by Brigido Cruz, Agaton Martin, Santiago Damian, Modesto Ferrer, Leonardo Marquez, and a Japanese military police, arrived in search for Ernesto Buenviaje. The accused Amado Menor pointed his gun at Buenviaje, while his companions dragged their victim downstairs, and there tied and thereafter taken away. Since then nothing was heard of Ernesto Buenviaje.

Mercedes Mendiola, wife of Ernesto Buenviaje, said that on December 30, 1944, her husband came to visit her. She told him to go away because he was wanted; she accompanied him to the house of his cousin and soon after they arrived at the place in barrio Caniogan, Maybunga, Pasig, Amado Menor, appellant herein, accompanied by Brigido Cruz, Agaton Martin, Santiago Damian, Modesto Ferrer, and Leonardo Marquez came looking for her husband. Amado Menor pointed his gun at Ernesto Buenviaje, while his companions dragged her husband downstairs and tied him. She could not exactly remember the number of Japanese military police accompanying Amado Menor and his Filipino companions, but the Japanese surrounded the house while the Filipinos went upstairs to get her husband. When Mercedes Mendiola was asked by the prosecution to identify and point out this appellant, she, without hesitation, pointed her fingers at Amado Menor among the various other accused whose cases were also being tried.

In corroboration of the testimony of Mercedes Mendiola, the prosecution also placed on the stand Alfonso Benito and Patricio Benito who saw Ernesto Buenviaje pass by their house in Sagad, Pasig, Rizal, with his hands tied and escorted by the accused and his above named companions.

In an effort to explain his conduct in the premises, appellant alleged that when the Japanese conducted the zoning in question, he was forced by them to row their *banca* which took them to the place of the zoning. While he claims that the Japanese compelled him to row for their *banca*, he says nothing, however, regarding his active participation in the zoning in question. The fact is that, according to the evidence, this appellant not only rowed the *banca* for the Japanese, but also took active part in establishing the military cordon and in gathering the inhabitants of the barrio of Tipas, Taguig, Rizal in front of the Catholic churchyard. Moreover, the evidence further shows that he stood guard over the persons who were detained at the seashore in Tipas, Taguig, Rizal and actually intruded in the house of Buenaventura Cruz, also in Tipas,

Taguig, Rizal and herded away therefrom the many inhabitants of the house. It is therefore obvious that, in spite of his alleged forced participation in the execution of the crime charged against him, it is very clear that he voluntarily took part in the conduct of the zoning, and irrespective of whether he took active part in all the overt acts described above, he "assumed full responsibility for all that the party did." (*People vs. Beato*, 44 Off. Gaz., 4838.)

There is no dispute as to the facts which support count No. 4. It has been clearly proven that he took part in the arrest of Ernesto Buenviaje, a *guerrillero*. It is very significant that Flavio Bernauro, testifying for this appellant stated that Ernesto Buenviaje was arrested by the gang of which Amado Menor was a member on December 30, 1944. As regards appellant's participation in the arrest of Buenviaje the testimonies of Patricio Benito, Mercedes Mendiola and Alfonso Benito are positive that appellant clearly took part in the arrest of Buenviaje.

The active participation of this appellant in the zoning in question and the subsequent arrest of Ernesto Buenviaje and his disappearance and possible death by killing, undoubtedly constitutes the adherence and giving aid and comfort to the enemy, which constitutes the element of treason under article 114 of the Revised Penal Code. It cannot be denied that the two counts under which this appellant has been convicted have been sufficiently proven and that the two-witness requirement of the law have been more than sufficiently complied with by the prosecution.

The People's Court, in finding him guilty of having violated article 114 of the Revised Penal Code, took into consideration the attendance of the mitigating circumstance of lack of instruction of this defendant, with no aggravating circumstance to offset the same, and therefore imposed the penalty prescribed by said article 114 in its minimum period, that is, *reclusión temporal*. We are not unmindful of the long-established doctrine of this Court that in the consideration of the circumstance of lack of education of the culprit, under article 11 of the old Penal Code (now article 15 of the Revised Penal Code), the trial court has ample opportunity to estimate the degree of intelligence, instruction, appearance and demeanor of the accused and this Court will not interfere in the exercise of such discretion by the trial court (*U. S. vs. Bundal*, 3 Phil., 89; *U. S. vs. Montecillo*, 11 Phil., 109; *People vs. Pado*, 19 Phil., 111; *People vs. Lampacan*, 19 Phil., 185; *People vs. Bangug*, 52 Phil., 87; *U. S. vs. Elicanal*, 35 Phil., 209).

However, in *People vs. Capitania* (49 Phil., 475), this court, departing from said rule, stated that in that particular case the accused had shown sufficient intelligence to be entrusted with the possession of a revolver, indicat-

ing a degree of intelligence and instruction beyond that of persons who are entitled to the benefit of said circumstance. In the case at bar, the acts executed by this appellant show that he is in possession of that degree of intelligence as to have capacitated him to act as an able and efficient informer of the Japanese who were bent on disrupting and destroying the guerrilla underground movement which was the main obstacle to the accomplishment of the occupation of these Islands. The subservience of this defendant, and his co-members of the Makapili, and those of his ilk, no doubt greatly enhanced the chances of the Japanese to carry out their plan of domination of the Philippines through the aid and cooperation of Filipinos who played traitors to their country. The trial court did not state the reason for the consideration of the circumstance in question, and we are more inclined to think that in this particular instance the mitigating circumstance of lack of instruction should not be entertained.

In view of the above considerations, and for lack of any modifying circumstance, the penalty that should be and is hereby imposed upon this appellant is the medium period of the penalty of *reclusión temporal* to death prescribed by the law, which is *reclusión perpetua*.

With such modification, the judgment appealed from is otherwise affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment modified.

[No. L-2321. January 31, 1950]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ARSENIA NUÑEZ, defendant and appellant

CRIMINAL LAW; TREASON; ACCUSED ACTING AS "FINGER WOMAN" OF THE ENEMY.—In taking part in the zoning activities of the Japanese, appellant was responsible for the arrest of several persons, with the added circumstance that some of them have never been seen alive again, and although it was not the purpose of the prosecution to make her directly and personally responsible for the disappearance, and perhaps the killing by the Japanese, of those persons, yet the conclusion is inevitable that by pointing them out to her Japanese masters, she had greatly cooperated in their arrest, detention, disappearance and perhaps death, by the positive act of accusing them and pointing them out to the Japanese Kempei, all of which constitute treasonable acts.

APPEAL from a judgment of the People's Court.

The facts are stated in the opinion of the court.

Antonio Gaw for appellant.

Assistant Solicitor General Guillermo E. Torres and
Solicitor Augusto M. Luciano for appellee.

TORRES, J.:

This is an appeal by Arsenia Nuñez from a judgment of the People's Court which convicted her of the crime of treason on an information consisting of one count, and after proper trial sentenced her to suffer the penalty of *reclusión perpetua* with the accessory penalties of the law, to pay a fine of ₱10,000 and the costs.

In the brief filed in her behalf by counsel *de oficio* it is contended that the alleged overt acts alleged in the information and which were made the basis of her conviction were not clearly proven to establish the guilt of the accused beyond reasonable doubt, that the guilt of appellant was predicated merely on circumstantial evidence and that the prosecution failed to prove the traitorous intent of the accused in accordance with the requirement of the treason law.

The charge brought against Arsenia Nuñez before the People's Court appears in the following:

"That during the period comprised between December 8, 1941, and March, 1945, more specifically on or about the dates hereinbelow mentioned, and in different places in the Philippines hereinafter designated, within the jurisdiction of this Honorable Court, the said accused, not being a foreigner but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, in violation of the said oath of allegiance, did then and there wilfully, unlawfully, feloniously and treasonably adhere to the enemy, the Empire of Japan and the Imperial Japanese Forces in the Philippines, against which the United States and the Philippines were then at war, by extending, facilitating and giving assistance, aid and comfort to the above-mentioned enemy, in the following manner and form to wit:

"The herein accused, with intent to give aid and comfort to the enemy, on or about July 23, 1944, wilfully, unlawfully and treasonably acted as the finger-woman when the barrio of Tapia, General Trias, Cavite, Philippines, within the jurisdiction of this Honorable Court, was 'zonified' by the Japanese, pointing out to the Japanese several men whom she accused as guerrillas, among whom were Carlos Guarin, Cayetano Asistores, Dionisio Carandang, Carlos de los Reyes, Dionisio Asistores and Severino Portugues, who were then and there loaded in a truck and taken away by the Japanese and were never heard of since that time; on the same occasion the herein accused wilfully and treasonably pointed to the Japanese soldiers several women whom she accused as wives of or connected with guerrillas, among whom were Balbina Rosa whom she pointed out as the wife of a guerrilla and as a result of which the said Balbina Rosa was imprisoned by the Japanese for two months and seven days.

"Contrary to law."

It appears from the evidence that Arsenia Nuñez, according to her own admission, a native-born citizen of the Philippines, was a resident of barrio Pasong Kawayan, municipality of General Trias, Province of Cavite, where she lived with her family up to the month of July, 1944. She was married to Albino Torres, but her husband having abandoned her, she moved to the City of Cavite where,

in consonance with her loose morals, particularly during the Japanese occupation, she became the mistress of Magno Garcia, a Japanese *mestizo* and a notorious spy in the service of the Japanese *Kempei-tai* in Cavite.

No less than four witnesses took the stand before the People's Court to substantiate the allegations made in the above-quoted charge. They are Teodoro Guarin, Marcelina Reyes, Perpetua Cadava, and Florencia Luneta.

Teodora Guarin, a sexagenarian and a merchant of Pasong Kawayan, General Trias, Cavite, stated that one afternoon in the month of July, 1944, Arsenia Nuñez, in company with a man named Garcia and four truckloads of Japanese soldiers arrived in Pasong Kawayan for the zoning of the barrio. The Japanese soldiers rounded up the inhabitants, including women and children, and herded them into a pre-designated place; they also rounded up Ceferino Portuguese, son of the witness, and Carlos Guarin. During the process of zoning, the appellant pointed out those two persons to her Japanese companions by telling them that they are bad men and guerrillas. Immediately thereafter, the Japanese soldiers tied the hands of Portuguese and Guarin and loaded them on a truck, and the two prisoners, with other persons from the same barrio, were taken away by the Japanese and brought to the City of Cavite. Teodora Guarin said that after that she never saw her son Ceferino again. She also testified that Garcia, known as "the fat man," was accompanying the appellant and the Japanese soldiers in the zoning of that place and was a notorious Japanese spy in Cavite. Appellant was living in Cavite with Garcia as his mistress, and, during the zoning of the barrio of Pasong Kawayan, she saw the appellant wearing a Japanese cap and clothing similar to that worn by Japanese soldiers.

Marcelina Reyes, a resident of barrio Tapia, General Trias, Cavite, testified that she knew the appellant since her childhood. In July, 1944, Arsenia Nuñez was in company with Japanese soldiers when they conducted a *zona* in her barrio and arrested Perpetua Cadava, Ceferino Portuguese, Carlos de los Reyes, Dionisio Colantang and a man who answered to the name of Tano. The witness was also arrested by the Japanese pursuant to the indication of appellant who informed them that her husband, Alonso Saliba, was a guerrilla. Marcelina was therefore loaded on a truck together with Ceferino Portuguese and a few others, and brought to the Military Police garrison in Cavite City, where she was investigated regarding the guerrilla activities of her husband. While she was detained in Cavite for two months and seven days, she saw the appellant sitting on a chair and holding office at the *Kempei-tai* headquarters in Cavite. Appellant was married to a guerrilla by the name of Albino Torres and the

accused joined the Japanese to compel the surrender of her husband. When the prisoners were brought to the City of Cavite, appellant was on the front seat of the vehicle, next to the chauffeur, and on that occasion she was wearing a Japanese uniform. Marcelina further stated that Carlos de los Reyes, one of those arrested and taken to the City of Cavite from the place of the *zona*, has never returned nor seen after his arrest; likewise, her brother Carlos de los Reyes and many others who were arrested have never returned to their respective homes.

The third witness Perpetua Cadava declared that she was acquainted with the appellant since her childhood. She narrated practically all the facts testified by the two previous witnesses and added that when she was arrested together with Marcelina Reyes, Ceferino Portuguez and others, her hands were tied and she was loaded on a truck together with those persons already mentioned. They were taken to the *Kempei-tai* garrison in the City of Cavite and investigated regarding her guerrilla connections. During her questioning in the *Kempei-tai* garrison, appellant was pacing up and down the floor of the premises and once approached her saying, "Is it true that your house is being used as headquarters of Magirog and is it also that your husband is a guerrilla?" after which, she was slapped on the face by appellant. Perpetua corroborated the other two witnesses when she stated that appellant was dressed in Japanese uniform, was wearing sun glasses, and frequently pointed out several persons to the Japanese and those pointed out by her were immediately tied by the hands and loaded on trucks by the Japanese. This witness was kept in the *Kempei-tai* garrison for one month and one day.

The fourth witness is Florencia Luneta, a merchant in the town of Tanza, Cavite. According to her, in 1944, she lived with the appellant and some guerrillas in the same house in the barrio of Tapia, General Trias. In July, 1944, the appellant suddenly left the house and lived with some Japanese in the City of Cavite. One afternoon, appellant came to the barrio of Tapia with Japanese soldiers traveling in four trucks and in order to conduct a *zona* in that place. The appellant pointed out the witness to the Japanese as the laundry woman of Magno Mairoguin, a guerrilla leader in Cavite; she also pointed out to the Japanese Marcelina Reyes, Perpetua Cadava and Balbina Posas. In fact, these women were wives of guerrillas and upon being pointed out by appellant their hands were tied and they were loaded by the Japanese on trucks and brought to the *Kempei-tai* headquarters in the City of Cavite. Florencia was investigated regarding her connections with guerrilla leader Magno

Mairoguin, and during her questioning she was confronted by her accuser, the appellant herein. She told the appellant, "Woman you might be mistaken; I am not a laundry woman of the guerrillas." She was detained in the Japanese garrison for one month and a half. During her confinement therein she saw appellant frequently in the Japanese headquarters. She saw appellant wearing a cap and a suit similar to that worn by the Japanese soldiers and when going out on an expedition with the Japanese, she usually sat near the chauffeur.

In the light of the above-stated facts, it is undeniable that this appellant has been acting as the "finger woman" of the Japanese when the latter zoned the inhabitants in the barrios of Tapia and Pasong Kawayan, municipality of General Trias, Cavite. All the witnesses for the prosecution have attested that she was always in the company of Japanese soldiers, and that appellant was wearing sun glasses, a Japanese cap and uniform, and that she was the one who pointed her accusing finger at the persons already mentioned above who were immediately put under arrest by the Japanese members of the *Kempei-tai* and transferred to their headquarters, investigated and tortured.

It is distinctly shown that in taking part in the zoning activities of the Japanese, appellant was responsible for the arrest of several persons such as Ceferino Portuguese, Carlos Guarin, Carlos de los Reyes and others, with the added circumstance that the three named persons have never been seen alive again, and although it is not the purpose of the prosecution to make her directly and personally responsible for the disappearance, and perhaps the killing by the Japanese, of Ceferino Portuguese, Carlos Guarin, and Carlos de los Reyes, yet the conclusion is inevitable that, by pointing them out to her Japanese masters, she had greatly cooperated in their arrest, detention, disappearance, and perhaps death, by the positive act of accusing them and pointing them out to the Japanese *kempei*.

Appellant admitted that she pointed out to the Japanese and caused the arrest of Ceferino Portuguese and three other persons; she also admitted that she had been living in the house of Magno Garcia, a notorious Japanese spy in the City of Cavite from July, 1944 up to the date of liberation thereof. She alleged, however, that a group of armed bandits locally known as "Texas" kidnaped her from the home of her parents in Pasong Kawayan, General Trias; that Ceferino Portuguese, a rejected suitor, was a member of that band; that her kidnapers brought her to a place called Santol where she was outraged; that after abusing her, her kidnapers brought her to the house of Perpetua Cadava where she was made to stay overnight guarded by Portuguese and three others. The day follow-

ing the zoning referred to by the witnesses for the prosecution, the house of Perpetua Cadava was raided by the Japanese soldiers and they found her there in the premises with Ceferino Portuguez and the latter's companions. When she was investigated by the Japanese, she reported to them what happened to her, and that she was kidnapped by the "Texas" band; but the Japanese did not believe her story and instead brought her to the City of Cavite and placed her under the custody of Magno Garcia. Upon the arrival of the American troops she escaped from the house of Garcia and proceeded to Batangas, Batangas, and stayed in the house of a friend. Then an American member of the CIC (Counter Intelligence Corps) arrested her on the charge of being a Japanese spy.

The above denials and assertions made by the defendant fail to counteract the evidence presented by the prosecution. For instance, one Felix Cubal who claims to be a next-door neighbor of the Nuñez family, testified that one day previous to the zoning of Pasong Kawayan, the appellant was kidnapped by the "Texas" band, but the appellant's father, Placido Nuñez, put on the witness stand by the defense, declared that he had no close neighbors, that his house was isolated and very far away from others, that he was working on his land when this happened and learned about it when he returned home. Alleging that he was afraid of the Japanese, he said, however, that he did not notify the local authorities about it nor take any steps to ascertain the whereabouts of his daughter, and that it was only on the following year, when the American forces were already occupying the province of Cavite, that the witness learned that his daughter, the appellant, was in the City of Cavite. The attitude of utter indifference shown by Nuñez in connection with the matter of the alleged kidnapping of his daughter is so unnatural, so contrary to the well-known strength and closeness of the family ties of the Filipinos, that we hardly believe the accuracy of this story of the kidnapping, and that appellant voluntarily left her home for the City of Cavite to join the Japanese.

This shows that the evidence of appellant is based on a shaky foundation. In fact, even assuming that her contention that she was criminally assaulted and kidnaped by the "Texas" bandits is true, yet, we fail to understand how such acts could justify her treasonable acts and adherence to the enemies of her country and fellow citizens. We find that the testimonies of the four women who were put on the stand by the prosecution ring true, and it is unbelievable that they would have concocted such accusations against this appellant, one of their own sex, if the facts related by them on the witness stand were mere fabrications.

The Solicitor General, agreeing to the plea of counsel for defendant, invites our attention to the attendance of the

privileged mitigating circumstance of minority of this offender when she committed those treasonable acts. (Rev. Penal Code, art. 13, par. 2.) The transcript of her testimony shows that this appellant, answering to questions of her counsel, said that, according to her mother, she was born on the 17th of August, but she did "not know what year." Her mother just told her that she "was 18 years old." However, when on January 5, 1948 she was put on the stand, after being sworn as a witness, she said that she was 21 years of age. Considering that the evidence shows that her treasonable acts were committed after her alleged kidnapping and raping by the "Texas" bandits in July, 1944, we may safely conclude that she was over 15 and under 18 years of age when she violated the treason law, and in the absence of evidence to the contrary (Judgment of the Supreme Court of Spain of June 9, 1890, Viada, Vol. 2, page 14, *cuestión* 2; U. S. *vs.* Agadas, 36 Phil., 246) when the culprit is over 15 and under 18 years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the proper period," upon this culprit (Art. 68, par. 2, Rev. Penal Code).

Treason is punished by *reclusión temporal* to death and a fine not to exceed ₱20,000. According to the rules for graduating penalties provided in article 61 of the Revised Penal Code, "when the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale." In this instance, the penalty next lower in degree is *prisión mayor*, to be imposed in its medium period, on account of the absence of modifying circumstances.

Pursuant to section 2 of the Indeterminate Sentence Law, as amended, this appellant, herein convicted of treason, is, however, not entitled to the benefits of the said law.

In view of all the foregoing, Arsenia Nuñez is, therefore, sentenced to ten years of *prisión mayor*. Thus modified, the judgment appealed from is otherwise affirmed, with costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment modified.

[No. L-2592. January 31, 1950]

THE MUNICIPALITY OF DINGRAS, plaintiff and appellant, *vs.* CORNELIO BONOAN, SOTERO SAMBRANO, FILEMON SACRO, PASCUALA BONOAN, and JOSE BONOAN, defendants and appellees.

EMINENT DOMAIN; DISMISSAL "MOTU PROPRIO" BY COURT IMPROPER; AFTER COMMISSIONERS SUBMITTED REPORT.—The dismissal of a case for want of prosecution is a matter addressed to the

sound discretion of the court. But that discretion must not be abused. Trial courts have, after all, the duty to dispose of controversies after trial and on merits whenever possible and it is deemed an abuse of discretion for them on their own motion to enter a dismissal which is not warranted by the circumstance of the case.

APPEAL from an order of the Court of First Instance of Ilocos Norte. Ramos, J.

The facts are stated in the opinion of the court.

Assistant Provincial Fiscal Vicente G. Erieta for appellant.

Abraham H. Leaño, Jose P. Hernando & Francisco Cavestany for appellees.

REYES, J.:

This is a condemnation proceeding instituted in 1939 in the Court of First Instance of Ilocos Norte for the acquirement of a tract of land needed for the enlargement of a school site. Defendants stated in their answer that they would have no objection to the expropriation of their land so long as their irrigation ditches passing through it were not closed or obstructed; and plaintiff municipality, on its part, made it of record that it was agreeable to this condition.

After making the deposit required in such cases, plaintiff, with defendants' conformity, was, on September 29, 1939, authorized to take possession, and the provincial fiscal informs us in his brief that plaintiff has since then been occupying the land and has even made improvements thereon. It also appears that the commissioners appointed to appraise the land have already submitted their report but that no action has as yet been taken thereon because when the case was called for hearing on November 27, 1947, the fiscal asked for time to amend his complaint and the court, without objection on defendants' part, granted a continuance "hasta nuevo señalamiento." The proceeding was at this stage when the court, on June 25, 1948, of its own accord and without previous notice or hearing, ordered the case dismissed for want of prosecution because of the failure of the fiscal to file the amended complaint which he had announced. The fiscal asked for reconsideration, explaining his inaction as being due to his inability to confer with his witnesses because of their prolonged absence from the locality, and at the same time informing the court that, after a careful study of the case, he no longer deemed it necessary to amend his complaint. But the motion was denied and so the fiscal appealed to this Court.

We can see no justification for the rather drastic action taken by the trial court. As a rule, the dismissal of a case for want of prosecution is a matter addressed to the sound discretion of the court. But that discretion must

not be abused. Trial courts have, after all, the duty to dispose of controversies after trial and on merits whenever possible (27 C. J. S., 251), and it is deemed an abuse of discretion for them, on their own motion, "to enter a dismissal which is not warranted by the circumstances of the case." (27 C. J. S., 260.) It appears in the present case that the condemnation proceeding was already far advanced when the court ordered it dismissed *motu proprio*. Plaintiff had already made improvements on the land being expropriated and the commissioners on appraisal had already fixed its value and submitted their report. Apparently, nothing essential remained to be done except to pass upon said report. Dismissal of the proceeding at that stage is not only wasteful but also uncalled for. A rule to speed the cause would have sufficed to end the delay and would have been the more proper measure under the circumstances.

Considering further that the proceeding is for a public purpose and that the order of dismissal has the effect of *res judicata* or an adjudication upon the merits since nothing to the contrary is therein provided (section 3, Rule 30), we think the trial court did not exercise a sound discretion in refusing to have the said order reconsidered.

The order appealed from is therefore revoked and the case ordered reinstated. Without costs.

Moran, C. J., Ozaeta, Parás, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

Order reversed.

[No. L-2944. January 31, 1950]

JULIA MANUELA LICHAUCO and MIGUELA ZAMORA, petitioners, *vs.* ANTONIO G. LUCERO, Judge of First Instance of Pangasinan, and MANUEL JOSE LICHAUCO, respondents.

RECONSTITUTION; LOST RECORDS OF APPEALED CASE; DUTY OF PARTIES; OMISSION OF A PARTY TO RECONSTITUTE IS NOT ABANDONMENT.—Once the record of the case is destroyed or lost, the duty of having the same reconstituted devolves upon both parties, so that the omission of one party alone to ask for reconstitution should not be construed as an abandonment of the case.

ORIGINAL ACTION in the Supreme Court. Certiorari.

The facts are stated in the opinion of the court.

Arturo Agustines for petitioners.

Quijano & Alidio for respondents.

REYES, J.:

This is an action for certiorari to annul an order of the respondent judge setting aside a prior order of another judge of the same court for the issuance of a writ of

execution in a case decided by said court but already elevated to the Court of Appeals.

It appears that in said case the plaintiff Manuel Jose Lichauco, as a result of the cross-complaint interposed by the defendants, was adjudged to acknowledge the defendant Julia Manuela Lichauco as his natural child and to give her support in the sum of ₱50 a month. The case was appealed by plaintiff to the Court of Appeals, where it was docketed as CA-G. R. No. 8635, but after the submission of appellant's brief, the record of the case in that court was totally destroyed during the battle for the liberation of Manila. Neither party applied for the reconstitution of the destroyed record, but on November 29, 1947, the appellees (petitioners herein) filed a motion for the execution of the judgment appealed from on the ground that appellant's failure to ask for the reconstitution of the record within the period fixed by this Court operated as an abandonment of his appeal and rendered the said judgment final and executory.

On September 22, 1948, Judge Mañalac granted the motion and ordered execution to issue. Appellant asked for a reconsideration, and, although his motion was filed more than three months after he was notified of the order, it was granted by Judge Lucero, who vacated the order of Judge Mañalac and quashed the writ of execution issued thereunder. It was appellee's turn to ask for reconsideration. But their motion for that purpose having been denied, they brought the present action for certiorari to have Judge Lucero's order annulled.

It should at once be stated that the appeal of the case to the Court of Appeals divested the Court of First Instance of its jurisdiction over the same, so that the order for execution issued by the Court of First Instance pending resolution of said appeal was void as having been rendered without jurisdiction. As such, it could be set aside at any time.

It is, however, contended that the appeal should be deemed abandoned because of appellant's failure to ask for the reconstitution of the destroyed record. We can not subscribed to this contention, because once the record of the case is destroyed or lost, the duty of having the same reconstituted devolves upon both parties, so that the omission of one party alone to ask for reconstitution should not be construed as an abandonment of the case. Moreover, it was for the appellate court where the appeal was pending and not for the Court of First Instance, which had already lost jurisdiction, to determine whether the appeal had been abandoned or not, and until that determination had been made by the appellate court, the Court of First Instance would have no power to declare the judgment appealed from final and executory.

It follows from the foregoing that the order complained of should be affirmed.

It appears, however, that although the record of the case in the Court of Appeals was totally destroyed, the original record in the Court of First Instance of Pangasinan, including the evidence, has remained intact. In the circumstances, rather than put the parties to the necessity of filing a new action and conducting a new trial, we would be serving the interests of justice if we let them continue the old case by allowing them to prosecute the appeal anew, giving them reasonable time for that purpose.

Wherefore, the petition for certiorari is denied and the appellant Manuel Jose Lichauco is given thirty days from the time he is notified of this decision to bring his appeal anew to the Court of Appeals. Without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.

PARÁS, J., dissenting:

I dissent from so much of the decision of the majority as allows appellant Lichauco to appeal anew from the decision of the Court of First Instance of Pangasinan to the Court of Appeals within thirty days.

Under section 29 of Act No. 3110, in case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the statutory period, they shall be understood to have waived the reconstitution and may file their respective actions anew. In view of the failure of the parties in the case herein involved (which was pending in the Court of Appeals when its records were destroyed) to timely move for proper reconstitution, the only course for us to follow is to hold that a new action is necessary. By allowing appellant Lichauco to appeal, this Court in effect sanctions the late filing of a petition for reconstitution, or the filing of an appeal after the expiration of the reglementary period. This result is very obvious. Suppose the appellees (herein petitioners) had not moved for the issuance of a writ of execution in the trial court, may appellant Lichauco validly institute, after the expiration of the statutory period, reconstitution proceedings in the Court of Appeals, or instead prosecute anew an appeal from the decision of the trial court? Of course not, and yet this is the very procedure authorized in the majority decision.

There are certain disadvantages and difficulties incident to the bringing of a new action, and whether they would prove to favor one or the other party, this Court has no right to disregard the intent and purposes of the Reconstitution Law (Act No. 3110).

Petition denied.

[NOTE: Due to typographical errors inadvertently committed in printing the decision No. L-1862, dated November 28, 1949—"Engracio de Asis vs. The Court of Appeals and Jose B. Feliciano, already published in the issue of May, 1951 (47 Off. Gaz., 2313-2315), the same is hereunder re-published duly verified and corrected.—Reporter's Office.]

[No. L-1862. November 28, 1949]

ENGRACIO DE ASIS, petitioner, *vs.* THE COURT OF APPEALS
and JOSE B. FELICIANO, respondents

OBLIGATIONS AND CONTRACTS; PAYMENT; PREWAR OBLIGATION PAID
WITH JAPANESE WAR NOTES AT THE DEMAND OF CREDITOR.—

When a vendor in a contract of purchase and sale of a real property executed before the war had required the vendee during military occupation to settle his account and accepted voluntarily the payment of the balance of the purchase price in Japanese Military notes, the vendor cannot be permitted now to question such payment.

PETITION to review on certiorari a decision of the Court of Appeals.

The facts are stated in the opinion of the court.

Jesus Fidelino for petitioner.

Menandro Quiogue for respondents.

PADILLA, J.:

This is a petition for a writ of *certiorari* to review a decision of the Court of Appeals.

On 9 October 1936, the petitioner promised to sell and convey to respondent Feliciano a parcel of land and improvements thereon located at the corner of Requesens and Anacleto Streets, Manila. The vendee was to pay ₱500 upon execution of the agreement and ₱79.32 every month thereafter until the total sum of ₱10,018.40 was fully paid (Exhibit A). The vendee performed his part of the contract up to September 1943. On 9 September 1943, the balance of the purchase price amounting to ₱2,934.84 and the further sum of ₱45.36, representing reimbursement of insurance premium advanced by the vendor, were paid by the vendee, the vendor executing the deed of sale of the parcel of land and improvements thereon (Exhibit B). The deed of sale was registered and transfer certificate of title No. 38453 issued in the name of the vendor was cancelled and, in lieu thereof, transfer certificate of title No. 70144 was issued in the name of the vendee.

On 31 May 1945, the vendor brought suit to annul the sale on the ground of threat, intimidation, or duress. The Court of First Instance of Manila, finding that the vendee did not threaten, intimidate, or coerce the vendor, dismissed the complaint with costs against the latter. The Court of Appeals affirmed the judgment. From the judgment of the last mentioned court the vendor brought the case to this

Court for review. He complains that the Court of Appeals failed to pass upon questions raised by him, to wit: (1) that the judgment of the trial court is contrary to the regulations of the Hague Conventions of 1907; and (2) that payment by the vendee in Japanese military or war notes of the balance to be paid by instalments impaired his right as guaranteed and protected by the Constitution.

Both courts, the trial and the appellate, found that the vendee did not avail himself of or resort to threat, intimidation, or duress when on 9 September 1943 the vendor executed the deed of sale upon payment by the vendee of the balance of the purchase price, because the vendee did not make the payment until after he had received from the vendor the statement of accounts marked Exhibit 1, with the request that it be settled; that the vendor instructed his own notary public to draw up the deed; that the vendor sent to the vendee the deed together with transfer certificate of title No. 38453 issued in his name; and that it is not true that the vendor received cash or Japanese military or war notes from the vendee in payment of the balance of the purchase price, because the payment was made by check.

These findings cannot be disturbed. They are binding upon this Court. Such being the case, even if the other two points raised by the petitioner were decided in his favor, that would not alter the result of the decision under review, because granting that the Japanese military or war notes were not legal tender and that the proclamation of the Commander-in-Chief of the Imperial Japanese Army making compulsory the use of the war notes for payment of pre-war obligations or debts was unauthorized by the regulations of the Hague Conventions of 1907, still having required the vendee to settle his account and accepted voluntarily the payment of the balance of the purchase price, as found by the courts below, the vendor cannot be permitted now to question such payment. He could have donated the balance of the purchase price and executed the deed of sale in favor of the vendee.

The judgment is affirmed without costs.

Moran, C. J., Ozaeta, Parás, Bengzon, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

PADILLA, J.:

I certify that Mr. Justice Feria voted for the affirmance of the judgment.

Judgment affirmed; petition denied.

DECISIONS OF THE COURT OF APPEALS

[Nos. 2758-R y 2759-R. Abril 30, 1949]

FULGENCIO MANUEL, Y OTROS, demandantes y apelantes, *contra* EUGENIO AGSALUD, demandado y apelado. EUGENIO AGSALUD, solicitante y apelado, *contra* FULGENCIO MANUEL, Y OTROS, opositores y apelantes.

HERENCIA; HEREDEROS; SOLAMENTE TIENEN DERECHO A HEREDAR BIENES DEJADOS POR SUS CAUSANTES; CASO DE AUTOS.—Aunque el demandado se ha descuidado en registrar el título a su favor, la parte contraria no puede invocar mejor derecho sobre el lote en cuestión, pues ellos derivan su título como herederos y no tienen concepto de terceros con respecto a sus causantes, los esposos Sarmiento. Y por esa cualidad de herederos, solamente tienen derecho a heredar los bienes dejados por sus causantes, y en este caso particular, el terreno en cuestión ya no era de Tomás Sarmiento cuando murió, pues lo había vendido a Mauricio Orden y éste a su vez a Eugenio Agsalud. Y además ellos (los herederos) nunca se han posesionado de este terreno. Luego no pueden reclamar mejor derecho porque sabían que Agsalud ya estaba en posesión dominical de ese terreno al tiempo de solicitar la distribución sumaria el 1927. (*Winkleman vs. Veluz*, 43 Phil., 604; *Gustilo vs. Maravilla*, 48 Phil., 442; *Quison vs. Suarez*, 45 Phil., 901.)

APELACIÓN *contra* una sentencia del Juzgado de Primera Instancia de Pangasinan. Villamor, J.

Las hechos aparecen relacionados en la decisión del Tribunal.

Jose de la Cruz en representación del apelante.

Lauro C. Maiquez en representación del apelado.

BARRIOS, M.:

Estos dos asuntos se vieron conjuntamente por tratarse de un mismo lote y de las mismas partes.

Los esposos Tomás Sarmiento y Manuela Bañaga murieron el 1921 y 1918, respectivamente, sin dejar herederos forzosos. El septiembre 6, 1919, Tomás Sarmiento vendió la parcela de terreno, lote No. 5290 del Catastro de Urdaneta, Pangasinán, con una casa de materiales fuertes (certificado original de título No. 15758), a Mauricio Orden, Exhíbito 2, quien se posesionó del citado lote. El 22 de marzo de 1920, Mauricio Orden vendió el mismo lote a Eugenio Agsalud, que también tomó posesión del terreno y lo cultivó aprovechándose de sus productos desde la fecha de la compra hasta ahora sin interrupción y de una manera quieta, pública y pacífica. Juntamente con la escritura de venta Exhíbito 2, Mauricio Orden entregó a Eugenio Agsalud el duplicado del certificado original de título a nombre de los esposos Tomás Sarmiento y Manuela Bañaga (Exhíbito 3), que Tomás Sarmiento también había entregado a Mauricio Orden cuando se efectuó la compraventa. Estos trasposos

no se registraron en la oficina del Registrador de Títulos de Pangasinán; Eugenio Aagsalud, declaró que estaba ocupado atendiendo la educación de sus hijos y cuando estalló la guerra y vinieron los japoneses a fines de diciembre de 1941 se quemó el original de la escritura de venta otorgada por Mauricio Orden, a su favor. El julio 15, 1947, Mauricio Orden, a instancias de Eugenio Aagsalud, extendió ante el Notario Público Melecio E. Bongolan una escritura de venta sobre el mismo terreno, haciendo constar que la escritura que otorgó en marzo 22, 1920 se quemó a fines de diciembre de 1941, y estuvo en posesión del lote desde septiembre 6, 1919 a marzo 22, 1920, y desde esta última fecha hasta el presente, Eugenio Aagsalud lo ocupó pacífica, adversa, pública y continuamente como dueño absoluto (Exhíbito 1).

Fulgencio Manuel en 3 de marzo de 1927 presentó solicitud para la distribución y adjudicación sumaria de los bienes relictos de los difuntos esposos Tomás Sarmiento y Manuela Bañaga, y el Juzgado de Primera Instancia de Pangasinán, en 24 de marzo de 1927 (Exhíbito A), dictó orden declarando a Fulgencio Manuel, Candida Manuel, Victoriana Manuel, Maria Manuel, Petromia Manuel, Juana Manuel, Maura Manuel, Agustina Nicolás y Fausta Flores, únicos herederos supervivientes de los antedichos finados, como descendientes de Cristóbal Sarmiento, hermano de Tomás Sarmiento (t. n. t., p. 2), y los citados herederos obtuvieron la inscripción a sus nombres la parcela de terreno comprendido en el certificado de transferencia de título No. 5157 (Exhíbito D), y la cancelación del certificado original de título No. 15758 a nombre de los esposos Sarmiento.

El 31 de marzo de 1944 estos herederos presentaron la demanda civil No. 422 en el Juzgado de Primera Instancia de Pangasinán para recobrar la posesión del terreno en cuestión y pedir daños del demandado Eugenio Aagsalud, y el 4 de septiembre de 1941, Eugenio Aagsalud presentó una reclamación adversa, bajo el artículo 110 de la Ley 496, siendo opositores los demandantes en la causa civil.

El Juzgado de Primera Instancia de Urdaneta, Pangasinán, en 21 de diciembre de 1947, decidió conjuntamente estos dos asuntos, cuya parte dispositiva dice:

"In view of all the foregoing, a judgment is hereby rendered ordering the Register of Deeds for Pangasinan to cancel, upon payment of the legal fees, transfer certificate of title No. 5157 in the names of the plaintiffs-oppositors and issue, in lieu thereof, another transfer certificate of title in the name of the defendant petitioner Eugenio Aagsalud, married to Nicolasa Andaya, of legal age, Filipino citizen and resident of Urdaneta, Pangasinan."

Los demandantes-opositores y apelantes en este Tribunal, apuntan en su alegato nueve errores, que se reducen a la cuestión de quien de cada parte es la verdadera dueña del terreno en litigio.

Los demandantes-opositores fundan su acción en que habiendo obtenido el título No. 5157 del terreno en cuestión,

por ser herederos de los esposos Sarmiento, tienen derecho a la propiedad y a la posesión del mismo; mientras por otro lado, Eugenio Agsalud insiste en que no puede ser privado de su derecho de propiedad sobre el mismo terreno porque lo ha comprado debidamente de Mauricio Orden quien a su vez lo obtuvo en compra de Tomas Sarmiento y tomó posesión del mismo, Orden desde 1919 y Agsalud el año 1920 hasta ahora.

De las pruebas resulta que el demandado Eugenio Agsalud aunque se ha descuidado en registrar el título a su favor, la parte contraria no puede invocar mejor derecho sobre el lote en cuestión, pues ellos derivan su título como herederos y no tienen concepto de terceros con respecto a sus causantes, los esposos Sarmiento. Y por esa cualidad de herederos, solamente tienen derecho a heredar los bienes dejados por sus causantes, y en este caso particular, el terreno en cuestión ya no era de Tomás Sarmiento cuando murió, pues lo había vendido a Mauricio Orden y éste a su vez a Eugenio Agsalud. Y además ellos (los herederos) nunca se han posesionado de este terreno. Luego no pueden reclamar mejor derecho porque sabían que Agsalud ya estaba en posesión dominical de ese terreno al tiempo de solicitar la distribución sumaria el 1927, siendo de aplicación a este caso las siguientes doctrinas:

“A person who acquire a right or interest in a real property, knowing that another person has previously acquired the same interest but has failed to record it in his name, can claim no valid right to the property on the plea that he has registered his interest therein, because he has acted in bad faith. His knowledge of the prior unregistered interest serves the purpose of registration and he can not claim that he was not duly informed thereof. (*Winkleman vs. Veluz*, 43 Phil., 604.)”

“Section 56 of the Land Registration Law expressly provides that only the registration of the deed is the operative act to bind or affect property. However, when a person knowing that a land has already been conveyed to a third person who has failed to register his deed of sale thereof, he can not claim a preferential right to said property. He has acted in bad faith in making the purchase. He can not use the Torrens system as a shield for the commission of fraud. (*Gustilo vs. Maravilla*, 48 Phil., 442; *Quison vs. Suarez*, 45 Phil., 901.)”

En cuanto a la validez de la escritura hecha por Tomás Sarmiento, Exhíbito 2, a favor de Mauricio Orden, que los demandantes atacan como fraudulenta y ficticia porque el otorgante ya tenía unos 113 años de edad al tiempo de su otorgamiento y porque su sobrina Ambrosia Bañaga pudo haber ejercido influencia sobre su tío Tomas Sarmiento, pues vivían en una misma casa, esta aseveración no está sostenida por las pruebas. Por el contrario, está demostrado que el documento Exhíbito 2 se ha hecho con todas las formalidades de la ley. Además, si esta venta fuese fraudulenta o ficticia, no hubiese tenido en su posesión Mauricio Orden ni Eugenio Agsalud el duplicado del certificado

original de título del lote en cuestión. Todos estos detalles demuestran la autenticidad y debido otorgamiento del Exhíbito 2.

En vista de las consideraciones antes expuestas, somos de opinión y así lo declaramos, que el juzgado inferior no incurrió en ninguno de los errores apuntados por los apelantes, y en su virtud, confirmamos la decisión apelada en todas sus partes, con costas.

Así se ordena.

Labrador y Paredes, MM., están conformes.

Se confirma la sentencia.

[No. 3173-R. May 17, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
ANGEL ANDEN and TEODORO MADAMBA, defendants and appellants.

1. ATTORNEY-AT-LAW; MEMBERS OF THE BAR, AS OFFICERS OF THE COURT SHOULD WELCOME SCRUTINY AND CRITICISM OF THEIR ACTS AS SUCH.—Members of the bar, as officers of the court, should expect to have their actuaciones as such scrutinized and subjected to criticism by others more severely than the doings of members of any other profession. Not only their professional activities but even their private life, insofar as the latter may reflect unfavorably upon the good name and prestige of the law profession and the courts, may at any time be the subject of inquiry on the part of the proper authorities and should any lawyer really do anything contrary to his oath as such the proper authorities may upon complaint or even *motu proprio* conduct an investigation into the matter and suspend or disbar him, as the case may warrant. Therefore, as long as he has not been called upon to account for conduct attributed to him in any newspaper, a member of the bar may feel happy and safe in the thought that nothing unethical or immoral has been laid at his doors. After all, one's best shield and protection against criticism and outright defamation are his own conscience and his clean and unblemished personal record.
2. CRIMINAL LAW; LIBEL; EVIDENCE; LIBELOUS MATTER SUSCEPTIBLE OF VARIED INTERPRETATIONS; PROPER INTERPRETATION BY COURTS OF THE REAL PURPOSE OF THE WRITER.—Where the allegedly libelous matter is susceptible of two or more interpretations, one libelous and the other not libelous, courts of justice are not justified in holding that the real purpose of the writer was to have the public understand what he wrote in the light of the worse possible meaning. There must be clear evidence that such was the case.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Pelaez, Pelaez & Pelaez for appellants.

Solicitor General Felix Bautista Angelo and *Assistant Solicitor General Guillermo E. Torres* for appellee.

DIZON, J.:

In criminal case No. V-1207 of the Court of First Instance of Cebu, Angel Anden, Teodoro Madamba, Alfredo S. Cruz and T. L. Castillejo were charged with libel. After due trial Cruz and Castillejo were acquitted while Anden and Madamba were found guilty and each sentenced to pay a fine of ₱300, with subsidiary imprisonment in case of insolvency at the rate of ₱2.50 per day but not to exceed six (6) months in all, and to pay their respective share of the costs. From said judgment both appealed contending that the trial court committed the following errors:

"I

"The trial court erred in not deciding and dismissing the case on the grounds relied upon by defendants-appellants in its motion to quash.

"II

"The trial court erred in convicting defendants-appellants as the evidence presented by the prosecution and the rulings made by the trial court do not warrant such finding.

"III

"The trial court erred in not considering the alternative defenses and the nature of the interest of the witnesses for the prosecution.

"IV

"The trial court erred in not acquitting Angel Anden."

It is not disputed that on April 20, 1947 the *Pioneer Press* published, under the signature of the appellant Teodoro Madamba, an article entitled "One Year of Police Reporting," the pertinent part of which (appearing on page 7) reads as follows:

"And there was the news story against which an upstart lawyer who had just passed the bar and so wanted to get free advertising at the expense of the PIONEER PRESS. He submitted to one of the assistant city attorneys his reasons why he thought a news report was libelous. The fiscal studied the lawyer's brief for two days and found there was nothing libelous in the news report.

"The news story was about a former guerrilla officer who was alleged to have swindled Archbishop Reyes of ₱200 and other prominent residents in the city of similar amounts. The man had been positively identified by Archbishop Reyes and by the other victims. Charges were filed against him but until now he has not been tried because he had escaped from the city jail. We wonder whether the lawyer who took up his case and wanted to vindicate his client's honor by suing the *Pioneer Press* for libel could tell us where the man is now."

The *Pioneer Press* was at that time published and printed in the City of Cebu, Philippines by the *Pioneer Press, Inc.*, the appellant Anden being its editor and the appellant Madamba a member of its staff.

Upon the other hand, the evidence of record sufficiently shows that the person referred to in the alleged libelous article as "an upstart lawyer who had just passed the bar and so wanted to get free advertising at the expense

of the *Pioneer Press*" and as "the lawyer who took up his (client's) case and wanted to vindicate his client's honor by suing the *Pioneer Press* for libel etc." is the complainant, Delfin Mercader. This, in fact, is not seriously disputed by the appellants.

The only remaining question, therefore, is whether or not the portion of the article in question quoted heretofore is libelous.

One obvious thing is that the alleged libelous writing is but a portion of a longer article written by appellant Madamba in a narrative style for the purpose of giving an account of the most salient incidents that came to his experience as police reporter of the *Pioneer Press* during the first year of life of the latter. The article was published in the first anniversary number of said newspaper. One cannot say, therefore, that the writer thereof wrote and published the same for the main purpose of assailing the good name and character of any person in particular, much less the offended party herein.

The portion of the first paragraph reproduced above alleged to be libelous is that which calls the complainant "an upstart lawyer who had just passed the bar and so wanted to get free advertising at the expense of the *Pioneer Press*." While it is relatively easy to concede that the contents of this portion are, to a certain extent, offensive and mortifying, one who views the matter against a more liberal and humane perspective or background will not be so easily disposed to elevate the same to the category and dignity of a libel. Whatever technical meaning may be ascribed to the adjective "upstart"—which to all appearances seems to be the main cause for complaint on the part of the offended party—it is undeniable that its common and usual connotation, the meaning which the general public gives it is no better nor worse than that of the words "daring" or "presumptuous." Upon the other hand, the imputation that the complainant "wanted to get free advertising at the expense of the *Pioneer Press*," neither by itself nor considered in connection with the rest of the writing complained of could be sufficiently serious and degrading to deserve the qualification of libelous.

We are of the opinion, therefore, and so hold that the portion of the writing under consideration does not attribute to the offended party any moral vice or defect and that the same is not calculated to put him in public contempt or ridicule. It must be observed in this connection that members of the bar, as officers of the court, should expect to have their actuations as such scrutinized and subjected to criticism by others more severely than the doings of members of any other profession. We must bear in mind likewise that not only their professional activities but even their private life, insofar as the latter may reflect unfavorably upon the good name and prestige of the law profession

and the courts, may at any time be the subject of inquiry on the part of the proper authorities and that should any lawyer really do anything contrary to his oath as such the proper authorities may upon complaint or even *motu proprio* conduct an investigation into the matter and suspend or disbar him, as the case may be. Therefore, as long as he has not been called upon to account for conduct attributed to him in any newspaper, a member of the bar may feel happy and safe in the thought that nothing unethical or immoral has been laid at his doors. After all, one's best shield and protection against criticism and outright defamation are his own conscience and his clean and unblemished personal record.

It is claimed that the expression "We wonder whether the lawyer who took up his case and wanted to vindicate his client's honor by suing the *Pioneer Press* for libel could tell us where the man is now" gives rise to the inference that the offended party herein had something to do with the escape of his client from the jail where he had been confined. This inference is possible but rather farfetched. Moreover, it is not by any means the only reasonable inference that may be drawn from the portion of the allegedly libelous article under consideration. For instance, "the lawyer who took up his case and wanted to vindicate his client's honor" could have been in a position to tell "where the man is now" for the simple reason that, although he had nothing to do at all with his escape from jail, he learned of the whereabouts of his client after the latter had escaped—which is neither criminal nor impossible. In the absence of evidence that the real intent of the writer was to charge the offended party with having helped his client, directly or indirectly, to escape from jail, we cannot hold that that was really his intent in this particular case. In other words, where the allegedly libelous matter is susceptible of two or more interpretations, one libelous and the other not libelous, courts of justice are not justified in holding that the real purpose of the writer was to have the public understand what he wrote in the light of the worse possible meaning. There must be clear evidence that such was the case.

In this case the Court is virtually made to choose between convicting the appellants and thus assuage the personal feelings of the offended party hurt by the more or less strong and provocative language used against him, or acquit them in order to prevent the curtailment of the freedom of expression. Our choice cannot be but the latter.

In view of all the foregoing, we are of the opinion and so hold, that the appealed judgment must be, as it is hereby reversed, with costs *de oficio*.

Concepcion and De Leon, JJ., concur.

Judgment reversed.

[No. 2188-R. June 6, 1949]

SILVERIO LACRE, plaintiff and appellee, *vs.* AMBROSIO CAGAS, BLAS MADELO, PEDRO OCLARIT, ESTEFANIA OCLARIT, and CRISPULA GALES, defendants and appellants.

DAMAGES; JAPANESE NOTES; PRICE OF PALAY; JUDICIAL NOTICE; BALLANTYNE SCALE OF VALUE, APPLIED.—As to the price of palay no evidence was introduced by defendants to contradict the testimony of plaintiff that it was P25, Philippine currency, per cavan in the years 1944 and 1945. But judicial notice can be taken of the fact that prices in those years regulated by the fixing of a ceiling price, which should be respected and enforced. In the year 1944 the price was P25 (Japanese military notes) per cavan (Rules and Regulations approved by Food Administrator pursuant to section 3 (i) and section 17, of Act No. 9, Food Administration Act), and in 1945 it was P3 (Executive Order No. 24, as amended by Executive Order No. 28). In the year 1944 the owner's share in the harvest was P600 Japanese notes, or around P23 at an average equitable value of P26 Japanese military notes, to P1 Philippine currency (Ballantyne Table). In the year 1945 the share is P72.

APPEAL from a judgment of the Court of First Instance of Bohol. Rodriguez, J.

The facts are stated in the opinion of the court.

Conrado D. Marapao for appellants.

Anastacio A. Mumar for appellee.

LABRADOR, J.:

This is an action of forcible entry of two parcels of land one situated in Can-ayaon-Antipolo and another in Cantangao-Abihilan, municipality of Garcia-Hernandez, Bohol. The lands belonged to the spouses Lorenzo Oclarit and Toribia Pagaran during their lifetime. Plaintiff herein was a son-in-law of said spouses, having been united in first marriage to their youngest daughter, Sabina Oclarit. The defendants are either brothers or sisters, or nephews of plaintiff's first wife. The lands appear to have been declared for tax purposes in the name of plaintiff, and he was in possession of them for some years prior to the war. Plaintiff claims that after the death of his first wife and after having joined his parents, the spouses Oclarit and Pagaran asked him to join them, and this he did; that later they arranged his marriage for the second time; and that immediately after this marriage they bequeathed these parcels of land to him. For the purposes of this action it is not necessary to make a finding on this claim. However, it seems clear that he had been in possession for around thirty years.

In the month of November, 1943, defendants entered upon one parcel of land, then in the possession and declared in the name of plaintiff, and without the consent

of the latter occupied 36 paddies of the same, leaving 5 paddies to the plaintiff. The defendants or their children worked these 36 paddies to the exclusion of plaintiff, and they are Tiburcio (or Ambrosio) Cagas, Pedro Oclarit, Crispula Oclarit, Teofilo Oclarit (son of Crispula Gales), and Quintin Madelo (son of Blas Madelo). Plaintiff and his son testified that when he prohibited them from plowing the land, they replied that it is a land of their grandfather Lorenzo Oclarit, and that if he had ₱100 for litigation, they had double that amount. The defendants, however, testified that they had occupied the land since the year 1942, because they are entitled to it, but that in 1943, while they were thereon and when plaintiff went there, they assigned to him five paddies, which he accepted. The plaintiff claims that this parcel of land is the land described in his tax declaration, Exhibit A, while the latter claim that it is the one described in tax declaration, Exhibit 1, which is also in the name of plaintiff. Defendants, however, admitted that up to 1942 plaintiff was occupying the land, and this because he was paying the taxes thereon. Plaintiff and his son also testified on the products of the lands, and that the value of a cavan of rice during the occupation was ₱25.

As to the second parcel, plaintiff and his son also testified that the same thing happened with respect thereto—that defendants entered upon the land, claiming it as their grandfather's, and that two of the defendants worked thereon, first Pascual Oclarit, son of Pedro Oclarit, and later Teofilo Oclarit, son of Crispula Gales. The defendants denied having occupied or cultivated this parcel of land.

The trial court decided that the land admitted to have been occupied by the defendants is that one covered by tax declaration, Exhibit A, and described in the complaint, not the one which the defendants pretended to have occupied. Its reason for arriving at this conclusion is the fact that defendants did not deny plaintiff's acquisition thereof by bequest, and because they admitted in their answer in the justice of the peace court and in their answer in the Court of First Instance that this land was formerly assigned to plaintiff's first wife, Sabina Oclarit. It found that defendants had entered upon the two parcels of land described in the complaint, but excluded defendants Estefania Oclarit and Crispula Gales from the judgment, and sentenced the remaining defendants to pay plaintiff ₱500, representing one-third of the value of the produce for the last three years (Record on Appeal, pp. 6-9).

On this appeal it is contended on behalf of the defendants that the trial court erred in finding that the defendants have entered and occupied the lands described in

the complaint, and that the plaintiff was in any way damaged by said occupation. They also argue that supposing that the lands occupied were those claimed by plaintiff to have been occupied, more than one year had already expired before the complaint was filed and, therefore, the complaint should have been dismissed.

We have reviewed the evidence, and we find the findings of the trial court as to the identity of the lands subject of the action to be supported by the preponderance of the evidence. Aside from the reasons given by the trial court to support its findings, we may mention the fact that as the plaintiff has been the one working the land for thirty years, paying the taxes thereon, and in whose name the land is declared, he is certainly in a better position to say which is the tax declaration of the land occupied, whether Exhibit A or Exhibit 1. The tax declaration covering the land is, besides immaterial, as it is an admitted fact that plaintiff has been in possession thereof before the date of entry by defendants.

As to the fact that, according to defendants, they had entered since 1942, even if this were so, the case may not be dismissed because when, without objection on the part of the defendants, the case was appealed to the Court of First Instance from the justice of the peace court, the former court acquired jurisdiction to try it by virtue of its original jurisdiction (section 11, Rule 40, Rules of Court).

We, however, find that the exclusion of defendants Estefania Oclarit and Crispula Gales is not justified by the evidence, for even if they did not join in working the lands, their sons did so, evidently in representation of their rights and interests. Thus the son of Estefania Oclarit is Teodoro Laheal, and according to herself this son of hers worked on the land in question (t.s.n., p. 36). So did Teofilo Oclarit, son of Crispula Gales (Ibid., pp. 55-56).

In so far as the amount of damages is concerned, it was shown that 12 cavans of palay was the owner's share in the harvest of the two parcels of land. Since there are two harvests every year, the total annual produce is 24 cavans. As to the price of palay no evidence was introduced by defendants to contradict the testimony of plaintiff that it was ₱25, Philippine currency, per cavan in the years 1944 and 1945. But we can take judicial notice of the fact that prices of rice in those years were regulated by the fixing of a ceiling price, which we are in duty bound to respect and enforce. In the year 1944 the price was ₱25 (Japanese military notes) per cavan (Rules and Regulations approved by Food Administrator pursuant to section 3 (i) and section 17 of Act No. 9, Food Administration Act), and in 1945 it was ₱3 (Exec-

utive Order No. 24, as amended by Executive Order No. 28). In the year 1944 the owner's share in the harvest was ₱600 Japanese notes, or around ₱23 at an average equitable value of ₱26 Japanese military notes to ₱1 Philippine currency (Ballantyne Table). In the year 1945 the share is ₱72.

Wherefore, the judgment appealed from is hereby affirmed, with the modification that instead of only three, all of them are sentenced to pay the plaintiff the sum of ₱95 for the years 1944 and 1945. They are also sentenced to pay plaintiff 24 cavans of palay or its equivalent yearly beginning 1946 until the possession of the lands is returned. All of them are hereby sentenced to pay the costs in both instances. So ordered.

Paredes and Barrios, JJ., concur.

Judgment modified.

[No. 2575-R. June 9, 1949]

BASILIA EGUIA, plaintiff and appellant, *vs.* FERNANDO EGUIA,
defendant and appellee

OWNERSHIP; ABANDONED RIVER BEDS; ABRUPT CHANGE OF COURSE OF RIVER, EFFECT.—It is not necessary in the case of abandoned river beds that the old river bed remain forever in its original condition. For the right application of the provisions of article 370 of the Civil Code, it is sufficient that there be some reasonable indication on the ground of the abandoned bed and that there be sufficient evidence showing that the river changed its course not gradually or imperceptibly but abruptly. These conditions are fairly fulfilled by the case made by the appellee.

APPEAL from a judgment of the Court of First Instance of Zamboanga. Encarnacion, J.

The facts are stated in the opinion of the court.

Malcolm G. Sarmiento for appellant.

Teofilo Buslon and Romulo E. Garrovillo for appellee.

DIZON, J.:

On May 1, 1941 the plaintiffs filed a complaint in the court below alleging that they owned a parcel of land with an area of 107,930 square meters, located at barrio Daanlungsod, municipality of Katipunan, Zamboanga, known as lot No. 1, G.L.R.O. Record No. 39544, and covered by original certificate of title No. 14256; that by the slow but continuous action of the waters of the Dicayo River—northern boundary of said lot—its area had been increased by about 9 hectares, 42 ares and 66 centares of which they had been in peaceful possession until the month of August 1938 when the defendant, by means of force, threats and intimidation, usurped a portion of the northern part of said lot "bounded in the north, by the Dicayo River, measuring 400 meters, more or less; in the east, by Basilia

Eguia, measuring 200 meters, more or less; in the south, by Basilia Eguia, measuring 400 meters, more or less; and in the west, by Basilia Eguia, measuring 200 meters, more or less," the said "usurped portion (consists) consisting of the aforementioned added area of about 9 hectares, 42 ares and 66 centares * * * and about 3 hectares of the original area of lot No. 1"; that because of the acts of usurpation committed by the defendant, the plaintiffs suffered damages in the sum of P2,000 and would continue to suffer such damage at the rate of P900 annually. They prayed the court, therefore,

"(a) To render judgment in favor of the plaintiff against the defendant.

"(b) To order the defendant to vacate the area now in question and to declare the plaintiff to be the owner of the same.

"(c) To condemn the defendant to pay the plaintiff damages in the sum of P2,000 and further damages at the rate of P900 per year from the date of this complaint up to the termination of this case.

"(d) To condemn the defendant to pay the costs of this case; and

"(e) To grant to plaintiff such other remedies as this Honorable Court may deem just and proper in accordance with law and equity."

Defendant's answer, on the other hand, denied the allegations of the complaint and, by way of special defense, alleged that the land in question was an integral part of his property situated at Taga, Daanlungsod, Katipunan, Zamboanga, described as follows: "Boundaries: North, Laoy Creek; east, María Eguia; south, Dicayo River; and west, Jolo Sea"; that in 1927, because of a strong flood, the Dicayo River "changed abruptly and suddenly its course towards the northern part of defendant's land in such form and manner that the land now in question was torn away and segregated from the main area of defendant's land"; that since then, up to the filing of his answer, the defendant had been in peaceful possession of the aforesaid portion."

After due trial the lower court rendered judgment whose dispositive part reads as follows:

"En su virtud, el Juzgado falla esta causa en el sentido arriba indicado, o sea, que se adjudica a los demandantes como de su pertenencia y propiedad la mitad ($\frac{1}{2}$) Sur en toda su extensión a lo largo de su terreno del cauce del Río Dicayo, como arriba se ha descrito; y la mitad ($\frac{1}{2}$) restante de dicho cauce abandonado Fernando Eguia en toda su extensión de Este a Oeste a lo largo de ambos predios.

"El correspondiente Agrimensor debidamente autorizado para todos los efectos legales, queda autorizado a trazar una línea divisoria por medio de mojones de cemento en todo el largor del referido cauce del Río Dicayo abandonado, haciendo que la mitad ($\frac{1}{2}$) Norte perteneciera al demandado y la mitad ($\frac{1}{2}$) Sur a los demandantes, de acuerdo con las respectivas posiciones de sus correspondientes terrenos. El costo de este trabajo correrá a cuenta de las dos partes por mitad ($\frac{1}{2}$).

"Se adjudica, como arriba ya se ha dicho, como de su propiedad, al demandado Fernando Eguia, todo el terreno intermedio entre el antiguo cauce y el nuevo cauce del Río Dicayo, según consta en el

croquis Exhibito "C" presentado en autos como prueba. No se hace pronunciamiento alguno en cuanto a las costas. Se ordena a las partes atenerse a los términos de este fallo.

"No se adjudica cantidad alguna en concepto de daños y perjuicios a favor de nadie, por no existir pruebas suficientes sobre los mismos."

Having perfected an appeal from said judgment, the plaintiffs now contend that the trial court committed the following errors:

I

"The lower court erred in holding the alleged biggest flood in 1927 the Dicayo River suddenly and abruptly changed its course and opened a new course at defendant's land.

II

"The lower court erred in not holding lot 1-C, the land in controversy is formed by gradual and continuous deposits of sediments brought by the current of the Dicayo River during flood seasons while the other bank is constantly eroded.

III

"The lower court erred in applying article 370 of the Civil Code and not articles 353 and 366 of the same code.

IV

"The lower court erred in not holding plaintiffs were in actual prior and peaceful possession of lot 1-C.

V

"The lower court erred in not holding defendant is liable for damages to plaintiffs."

It is not disputed that the Dicayo River was the boundary between the respective properties of the parties herein, appellants' land lying south of said river and appellee's lying north thereof. It is likewise a fact that, in the course of time, the Dicayo River changed its course, either slowly but continuously, as contended by the appellants, or suddenly and abruptly, as contended by the appellee. The actual and undeniable result of this change of course, however, is that between the property of the appellants covered by and described in their original certificate of title, on one side, and the Dicayo River as presently located, on the other, there is the strip of land now in dispute. Appellants claim it upon the theory that it had been added to their property by accretion, while the appellee claims it as part and parcel of his property from which, according to him, it was segregated or separated when the Dicayo River abruptly changed its course in 1927.

After a careful review of the testimonial and documentary evidence of record, we are inclined to agree with the trial court that—

"Las partes pretenden en el presente litigio más de lo que la ley provee, pues los demandantes piden todo el terreno de nueve hectáreas poco más o menos; mientras que el demandado, por otro lado, sostiene que tales hectáreas le pertenecen en su totalidad—" (Record on Appeal, pp. 14-15.)

Upon the question of how the Dicayo River changed its course, we find the preponderance of the evidence to be fairly in favor of appellee's claim that it was abrupt and sudden, caused by a big flood that took place in May, 1927. Even some of the witnesses for the appellants admitted that the aforesaid river changed its course but once and that there had been but one great flood in the region of the Dicayo River since 1927. In thus changing its course the river aforesaid opened a new bed through the property of the appellee—located north of the old bed.

That the old bed is, to a certain extent, still visible or recognizable may be clearly inferred not only from the testimony of the witnesses for the appellee and from that of some of the witnesses for the appellants, like Calixto Surdiacal and Máximo Elope, but also from the observations personally made during the ocular inspection by His Honor, the trial judge (trans. pp., 123-124). The minutes of the ocular inspection also state that the land lying north of the line traced between the points marked X-1 and X-2 on the plan Exhibit A does not belong to Basilia Eguía "porque era antiguo cauce del Río Dicayo," which can only mean that the old river bed had been definitely identified and located. That the old river bed is now "completamente terraplenado" does not argue decisively against this finding because appellant's own surveyor and witness, Calixto Surdiacal, testified that, in relation to the titled property of the appellant, the land in question (lot 1-c on the plan Exhibit A) is "desnivelado" and lower by thirty centimeters, in some parts, and by as much as one meter, in others (trans., p. 8)—which circumstance corroborates the lower court's finding that lot 1-c is the old river bed abandoned since 1927.

It is not necessary, for the appealed judgment to prevail, that the old river bed remain forever in its original condition. For the right application of the provisions of Article 370 of the Civil Code, it is sufficient that there be some reasonable indication on the ground of the abandoned bed and that there be sufficient evidence showing that the river changed its course not gradually or imperceptibly but abruptly. These conditions are fairly fulfilled by the case made by the appellee.

If appellant's claim regarding the old river bed is untenable, it can be no less in the case of the land lying north thereof, because the same was part and parcel of appellee's property before the river changed its course.

The appellee, according to his own evidence, has been in possession of the old river bed, identified on the plan Exhibit A as lot 1-c, since the same was abandoned by the river. The appellants being entitled under the appealed judgment to one-half thereof, the question arises whether the former is liable to the latter in damages for the oc-

cupancy of that part of the old river bed that appertains to them. We believe that he is not, not only because—as the trial court held—there is no sufficient evidence regarding the damages suffered but also because, in view of the peculiar circumstances of the case, the appellee should be considered as a possessor in good faith.

As a result of all the foregoing we find that the lower court did not commit anyone of the errors assigned in appellant's brief.

Wherefore the appealed judgment is hereby affirmed in all its parts, with costs.

Concepcion and De Leon, JJ., concur.

Judgment affirmed.

[No. 2701-R. June 9, 1949]

VICENTE RAMA, plaintiff and appellee, *vs.* PACITA RAFFIÑAN, GUALBERTO RAFFIÑAN and PEDRO SEPULVEDA, defendants and appellants.

PLEADING AND PRACTICE; ACTION; PARTIES; INDISPENSABLE PARTY;

CASE AT BAR.—In the case at bar, the answers filed by appellant Sepúlveda and the answer filed by the now deceased Gabriel Raffiñan show positively that the latter was an indispensable party. Sepúlveda having based his main defense upon a contract of lease entered into between him and Gabriel Raffiñan, it would have been legally impossible to decide the issues raised in the case with finality and binding effect upon all parties concerned, without impleading the latter because any decision favorable to the plaintiff, now appellee, would have meant a nullification of the lease contract aforesaid. That Gabriel Raffiñan was an indispensable party became more obvious when, after he had been made a party defendant in the case by order of the trial court, he filed the answer mentioned heretofore. By virtue thereof the real main parties to the case became the plaintiff-appellee Vicente Rama and Gabriel Raffiñan, the decisive issue being that while Rama claimed to be the owner of the public forest land described in his complaint, together with the improvements existing thereon, by virtue of an alleged Deed of Absolute Sale executed in his favor by Gabriel Raffiñan on October 13, 1941, the latter claimed that he still owned said properties and that the said deed of conveyance was secured through fraud and without consideration. Sepúlveda himself thus became only a minor or secondary party to the case because his right to the possession and occupancy of the properties involved therein depended entirely upon Gabriel Raffiñan on October 13, 1941, the latter claimed that he will court committed a reversible error in proceeding with the trial of the case without having the deceased Gabriel Raffiñan substituted by the administrator of his estate, if any, or by all his heirs. As a result, this case must accordingly be remanded to the court below for further proceedings.

APPEAL from a judgment of the Court of First Instance of Cebu. Martinez, J.

The facts are stated in the opinion of the court.

Miguel Raffiñan and *Jesus P. Garcia* for appellants.
Vicente L. Faelnar for appellee.

DIZON, J.:

On April 25, 1944 the appellee, Vicente Rama, filed an action in the court below against the appellants Pacita Raffiñan, Gualberto Raffiñan and Pedro Sepúlveda to recover from them the title and possession of a parcel of public forest land situated in the barrio of Guinsay, Danao, Cebu, with an area of 13.56 hectares, together with the buildings and other improvements thereon.

In their separate answers, Pacita and Gualberto Raffiñan, after making a specific denial of the allegations of the complaint—except those made in paragraphs 1 and 2 thereof—alleged that they had and claimed no interest whatsoever in the subject matter of the action because the same belonged to their father, Gabriel Raffiñan.

Sepúlveda's answer, on the other hand, alleged that he was occupying the properties subject matter of the complaint by virtue of a contract of lease entered into between him and Gabriel Raffiñan, a copy of which was attached to and made an integral part of his pleading.

On July 4, 1944 the appellee filed an amended complaint making Gabriel Raffiñan a party defendant, to which the original defendants filed substantially the same answers. Gabriel Raffiñan, on the other hand, filed his own denying therein specifically the allegations of the amended complaint and, as special defense, further claimed ownership of the land and improvements in question. His answer likewise contained the following allegations:

"That on October 7, 1941, defendant herein was, and ever since has been, old, infirm, deaf and almost blind, and wholly incapacitated from attending to business;

"That on that day, the plaintiff fraudulently taking advantage of the infirmity and incapacity of the herein defendant, and without consideration, induced him to sign a simulated and fictitious deed of sale in his favor of the salt works in question, to the damage and prejudice of the legitimate heirs of the said defendant;" (Par. 3 and 4, page 34, Record on Appeal.)

Aside from asking for the dismissal of the amended complaint, Gabriel Raffiñan prayed the court, *inter alia*, to render judgment:

"(b) Declaring the herein defendant to be the true and lawful owner of the land in question and its improvements, including the salt works; and therefore entitled to the possession, occupancy, use and enjoyment of the same;

"(c) Declaring the contract of lease of the land in question entered into between defendant herein and Pedro Sepúlveda on March 31, 1944, to be valid and effective as against the whole world, especially against the plaintiff;

"(d) Enjoining the plaintiff from forever molesting the defendants Gabriel Raffiñan and Pedro Sepúlveda in the possession, occupancy, use and enjoyment of the land and improvements, including the salt works." (Pars., b, c and d, Record on Appeal, p. 35.)

It appears that on July 4, 1944 the deposition of Gabriel Raffiñan was duly taken. It is not disputed, on the other hand, that said party died before the day of the trial, for which reason when the case was called for that purpose, counsel for the defendants invited the attention of the court and of the plaintiff to such fact, so that the trial may be suspended and proper steps be taken to have the aforesaid deceased substituted either by the administrator of his estate or by his heirs. Appellee's counsel objected to the suspension of the proceedings, assuring the court that he had no interest in prosecuting the case against the deceased. Thereupon the trial court ordered the continuation of the trial with the understanding that should it appear later that the estate or heirs of the deceased Gabriel Raffiñan were indispensable parties, their inclusion as parties would be ordered. That step, according to the record, was never taken. After the trial, the lower court rendered judgment whose dispositive part reads as follows:

"For the foregoing, Vicente Rama is hereby declared as the lawful holder of the tract of public forest land described in Permit Exhibit C and the improvements thereon, and Pedro Sepúlveda, on the other hand, is ordered to vacate the said tract of public forest land, including the Salt works in question. Pacita Raffiñan and Gualberto Raffiñan are hereby absolved from the complaint.

"The claim for damages of Pacita Raffiñan is untenable." (Rec. on Appeal, p. 48.)

In this appeal appellants' first assignment of error reads as follows:

"The lower court erred in continuing with the trial of the case without representing Gabriel Raffiñan, an indispensable party, who died during the pendency of the action."

In the case of *Sanidad vs. Cabotaje*, 5 Phil., pp. 205, 206 and 207 the Supreme Court held:

* * * * *

The demurrer was overruled and on the 20th of August of the same year the defendant filed his answer to the complaint, praying that the case be dismissed, with costs to the plaintiff, denying the allegations in paragraphs 1, 5, 7, and 8, and averring that he had no knowledge of the statements contained in paragraph 9, and that Father Garces, a resident of Dagupan, Pangasinan, was the sole owner of the property claimed, and was therefore the only necessary party to the action; and that he, the defendant, Simon Cabotaje, was a mere administrator of the said property, and consequently not a proper party to the action.

* * * * *

Assuming, without deciding, that the property claimed in the complaint was actually in the possession of the said Father Garces, any judgment that might be rendered in this case in favor of the plaintiff would be necessarily void and of no effect if Simon Cabotaje were the only party defendant to the suit, since the property claimed is in the possession of a third party. For that reason it becomes impossible to arrive at a final determination of the case unless Father Garces is joined as a party defendant therein. This case comes within the provisions of the latter part of section 122 of the

Code of Civil Procedure, and it should therefore be directed that the complaint be amended so as to include all necessary parties for the final settlement of the case."

In the case at bar, the answers filed by appellant Sepúlveda and the answer filed by the now deceased Gabriel Raffiñan show positively that the latter was an indispensable party. Sepúlveda having based his main defense upon a contract of lease entered into between him and Gabriel Raffiñan, it would have been legally impossible to decide the issues raised in the case, with finality and binding effect upon all parties concerned, without impleading the latter because any decision favorable to the plaintiff, now appellee, would have meant a nullification of the lease contract aforesaid. That Gabriel Raffiñan was an indispensable party became more obvious when, after he had been made a party defendant in the case by order of the trial court, he filed the answer mentioned heretofore. By virtue thereof, the real and main parties to the case became the plaintiff appellee Vicente Rama and Gabriel Raffiñan, the decisive issue being that while Rama claimed to be the owner of the public forest land described in his complaint, together with the improvements existing thereon, by virtue of an alleged Deed of Absolute Sale executed in his favor by Gabriel Raffiñan on October 13, 1941, now in the record as Exhibit D, the latter claimed that he still owned said properties and that the said deed of conveyance was secured through fraud and without consideration. Sepúlveda himself thus became only a minor or secondary party to the case because his right to the possession and occupancy of the properties involved therein depended entirely upon Gabriel Raffiñan's right of ownership over the same.

Upon all the foregoing we are of the opinion, and so hold, that the trial court committed a reversible error in proceeding with the trial of the case without having the deceased Gabriel Raffiñan substituted by the administrator of his estate, if any, or by all his heirs. As a result, this case must accordingly be remanded to the court below for further proceedings.

It being unnecessary to consider and decide the other assignments of error made in appellants' brief, we refrain from expressing any opinion thereon.

Wherefore, the appealed judgment is hereby set aside and the record of this case is ordered remanded to the court below, with instructions that the administrator of the estate, if any, of the deceased Gabriel Raffiñan or all his known heirs be made parties to the case and thereafter that a new trial be had in accordance with law. No special pronouncement as to costs.

Concepcion and De Leon, JJ., concur.

Judgment set aside, record ordered remanded to the court below with instructions.

[No. 3087-R. June 9, 1949]

GREGORIO VEGA, plaintiff and appellee, *vs.* LORENZO IBEAS,
defendant and appellant

PLEADING AND PRACTICE; ANSWER; PRESCRIPTION; FAILURE TO REPLY TO ANSWER ALLEGING PRESCRIPTION; EFFECT.—The fact that the plaintiff did not file any reply to the answer alleging prescription as a defense does not mean that he admitted it; it rather means that he denied the answer in accordance with Rule 11 of the Rules of Court.

APPEAL from a judgment of the Court of First Instance of Camarines Norte. Ramos, J.

The facts are stated in the opinion of the court.

Ernesto de Jesus for appellant.

Roberto V. Zantua for appellee.

JUGO, J.:

The parties submitted this case to the court below on the following

“STIPULATION OF FACTS

“Come now the plaintiff and the defendant, by their respective counsel, and to this Honorable Court, respectfully submit the following stipulation of facts:

“1. That the parcel of land described in the complaint, declared in the name of Juan Ibeas under Tax Dec. 6837, was the conjugal property of the spouses Daniel Villeno and Felipa Ibeas.

“2. That sometime in May, 1936, the said Felipe Ibeas died.

“3. That upon the death of said Felipa Ibeas, the surviving spouse, Daniel Villeno, sold the whole parcel of land declared under Tax No. 6837, in favor of Lorenzo Ibeas, the herein defendant, as evidenced by a deed of absolute sale copy of which is hereto attached and marked as Exh. 1 for the defendant. The said deed of sale Exh. 1 was duly registered in the Office of the Register of Deeds of Camarines Norte.

“4. That after the sale of the land to Lorenzo Ibeas, said Lorenzo Ibeas paid the indebtedness of Felipa Ibeas to Leoncio Zamudio amounting to ten pesos and four *bocotes* of palay as evidenced by the private writing attached hereto and marked as Exh. 2 for the defendant.

“5. That on September 26, 1946, the children of the spouses Daniel Villeno and his late wife Felipa Ibeas sold to the herein plaintiff one-half of the land described in the complaint.

“6. That the ages of the surviving children of Felipa Ibeas are: Feliciano Villeno, 30 years; Pedro Villeno, 27 years; Domingo Villeno, 26 years; Irene Villeno, 25 years; and Ponciano Villeno, 17 years.

“Wherefore, we respectfully submit this case for decision based on the above stipulation of facts and on the pleadings presented by the parties.

“Daet, Camarines Norte, November 12, 1947.

“(Sgd) ROB. V. ZANTUA
“Attorney for the plaintiff

(Sgd.) ERNESTO DE JESUS
Attorney for the defendant.”
(Page 6, Record on Appeal)

The court rendered decision, the dispositive part of which reads as follows:

“In view of the above considerations, the Court has come to the conclusion and so holds and hereby renders judgment declaring

that the deed of sale in favor of the defendant marked Exh. 1 and the deed of sale executed on September 26, 1946, in favor of the plaintiff are not void *ab initio*; that these documents are both valid in so far and with respect to the portion of the land in question which may be adjudicated in favor of their respective predecessors in interest, after the liquidation, in accordance with law, of the conjugal partnership of the spouses Daniel Villeno and Felipa Ibeas, now deceased; that both parties have inchoate right to the land in question. Once this judgment becomes final, either party may institute intestate proceedings of the estate of the late Felipa Ibeas or initiate partition proceedings or extrajudicial partition. Without special finding as to costs.

"It is so ordered.

"Given at Daet, Camarines Norte, this 18th day of February, 1948.

(Sgd.) E. F. RAMOS
Judge"

(Page 24, Rec. on Appeal)

From the above decision the defendant appealed assigning the following errors:

"1. The lower court erred in not holding that the defendant had acquired title to the whole land by prescription.

"2. The lower court erred in holding that the right to bring an action by one of the co-heirs, Ponciano Villeno, who is a minor inures to the benefit of the other co-heirs who are of age."

The defendant claims that although the widower Daniel Villeno did not have the right to sell the one-half portion of the above-mentioned property belonging to the heirs of his deceased wife Felipa Ibeas, yet he had acquired ownership of the whole property by virtue of prescription. There is nothing in the stipulation of facts which states that the defendant has taken possession of the property, which is the necessary basis for the plea of prescription. He argues, however, that he alleged prescription in his answer but the plaintiff did not file any reply to it. The fact that the plaintiff did not file any reply to the answer does not mean that he admitted it; it rather means that he denied the answer in accordance with Rule 11. The appellant cites the case of *Rodriguez vs. Llorente* (49 Phil., 823). It will be noted that in that case judgment was rendered on the pleadings; in the present case judgment was rendered on the stipulation of facts.

It is true that in the last paragraph of the stipulation of facts it is stated that the case was submitted on the stipulation of facts and the pleadings; but this simply means, in so far as the pleadings are concerned, that the issues of the case are those set forth in the pleadings. But even if the judgment had been rendered on the pleadings, the plaintiff had controverted the allegations of the answer, as we have stated above.

It is not necessary to consider the second assignment of error as the above holding is decisive of the case.

In view of the foregoing, the decision appealed from is affirmed in all its parts, with costs against the appellant. It is so ordered.

De la Rosa and Rodas, JJ., concur.

Judgment affirmed.

[No. 2407-R. June 10, 1949]

**THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ISABELO DE LOS REYES, defendant and appellant**

1. CRIMINAL LAW; LIBEL; PRIVILEGED COMMUNICATIONS, TWO KINDS OF.—The law recognizes *ipso facto* the existence of two kinds of privileged communications, or, putting it in a more concrete way, two ways of establishing the privilege recognized by law which may be either (1) absolute, or (2) conditional or qualified. An example of absolutely privileged communication is that provided for in Article VI, section 15 of the Constitution, whereby no senator or representative of Congress shall be questioned in any other place for any speech delivered or any statement made by him during a parliamentary debate.
2. ID.; ID.; ID.; QUALIFIED PRIVILEGED COMMUNICATION; CASE AT BAR.—Tested in the light of the qualified privilege extended to a private communication made by any person to another in the performance of any legal, moral or social duty, it can not be denied that this qualified privilege is applicable to the accused because he wrote Exhibit A in the performance of a “legal, moral or social duty.” (33 Am. Jur., 132-134.) In the case at bar, the existence of the qualified privilege invoked by the accused undoubtedly exists; in fact he was not reporting to a superior certain existing conditions affecting his religious organization, but on the contrary, as the Supreme Head of the Philippine Independent Church, he was doing his best to enlighten a prominent lay member of the church on certain conditions, in order to convince him that he should change his attitude in the premises by accepting the existence of a situation which had already been passed upon and decided by the Supreme Council of Bishops. [Warren *vs.* Pulitzer Pub. Co., 78 S. W. 2nd (1934) 413-416.]
3. ID.; ID.; MALICE DEFINED.—According to Justice Street in his work, Foundations of Legal Liability, quoted in U. S. *vs.* Cañete (38 Phil., 253), malice is “a term used to indicate the fact that the defamer is prompted by personal ill-will or spite, and speaks not merely in response to duty, but merely to injure the reputation of the person defamed.”

APPEAL from a judgment of the Court of First Instance of Ilocos Norte. Barot, J.

The facts are stated in the opinion of the court.

Claro M. Recto and Jose Nava for appellant.

Assistant Solicitor General Inocencio Rosal and Solicitor Jesus A. Avanceña for appellee.

TORRES, Pres. J.:

The above-named accused Isabelo de los Reyes, Jr., was prosecuted for libel in the Court of First Instance of Ilocos

Norte. Upon his plea of not guilty, he was tried, found guilty and sentenced to pay a fine of ₱1,000, with subsidiary imprisonment in case of insolvency, not to exceed six months, and to pay the costs. He appealed to this Court, and in the brief filed on his behalf, counsel assails the correctness of the judgment by contending in his assignment of errors, that the lower court erred in its appraisal and evaluation of the evidence of the prosecution and defense, by reason of which the court: (1) did not declare that Exhibit A is a privileged communication; (2) held that defendant acted with malice; (3) admitted Exhibits B, C and D as proofs of defendant's malice; and (4) refused to admit Exhibits 21, 22 and 23 as evidence of the defendant.

Discarding unimportant details which would make unnecessarily long the statement of facts which gave rise to this prosecution, it appears from the record that at the outbreak of the Pacific War in 1941, the complainant Santiago Fonacier and the accused were respectively the "Obispo Máximo" (Supreme Bishop), and the secretary-general of the Philippine Independent Church. The complainant became "Obispo Máximo" of the Philippine Independent Church on *October 14, 1940*, in accordance with the constitution of said religious body to succeed Mons. Aglipay (Exhibit 7). The successor of complainant should, therefore, have been elected by the grand assembly or *Asamblea Magna* of the church on *September 1, 1943*, but due to circumstances caused by the war, the bishops then residing in the City of Manila and the neighboring provinces agreed that Mons. Fonacier should hold over as Supreme Bishop of the Church. After the liberation of the Philippines, an attempt was made on September 1, 1945, to convene the "Asamblea Magna" or the grand assembly of the church for the election of his successor, but for lack of quorum, the bishops present allowed Mons. Fonacier to continue in office for at least another year.

On the following day, September 2, 1945, the Supreme Council of Bishops of the church made and approved the designation of each bishop to his respective bishopric. Bishop Alejandro Remollino was assigned to the Diocese of Cavite and the latter notified the priests of his bishopric of his appointment. Upon learning of this, Supreme Bishop Fonacier wrote Bishop Remollino a letter, dated September 18, 1945, enjoining him from assuming the duties of his office and from taking possession of said diocese until he had approved the appointment made by the Supreme Council of Bishops. But in his communication of September 19, 1945, Bishop Remollino answered that he had been appointed bishop of the Diocese of Cavite by the late Mons. Aglipay; that said appointment was subsequently confirmed by the Supreme Council of Bishops; that he had

been ever since the bishop of said diocese; and that, therefore, he was ready to defend his stand on the matter before the courts of justice. This attitude of Bishop Remollino was resented by the complainant who took it as a personal offense.

Unfortunately, the dispute between Bishop Remollino and the complainant had its repercussions, for other bishops of the Philippine Independent Church took sides with the parties to the controversy. The complainant, however, taking a stern attitude, expelled from the church not only Bishop Remollino, but also Bishop Manuel Aguilar, because suspecting that the latter, who was then administering the diocese of Laguna, was the instigator of what he considered acts of insubordination and a campaign of defamation and vilification against him, on October 8, 1945, "expelled both Bishops Remollino and Aguilar from the church so as to insure discipline, according to him. The complainant testified that the expulsion was approved by the Supreme Council of Bishops on October 16, 1945, but the accused denied complainant's allegation and the minutes of the sessions of the council on October 17 and 18, 1945 (Exhibits 10 and 11), fail to confirm the complainant." (Decision of the lower court.)

At the meeting of the Supreme Council of Bishops held on September 2, 1945, the complainant submitted for the approval of that body the promotion of four priests, namely, Revs. Mariano Evangelista y Rosete, José de Guzman, Macario Ga, and Evaristo Palmos, to be bishops. The council disapproved the promotion of the first two named priests, and approved the promotion of Revs. Ga and Palmos (Exhibit 9). Moreover, and without the approval of the Supreme Council and in disregard of the constitutional precepts of the church, Supreme Bishop Fonacier consecrated seven new bishops of his own choice, including Rev. Mariano Evangelista y Rosete, whose promotion to the bishopric was previously rejected by the Supreme Council of Bishops, and likewise transferred the central office of the church to the convent of the priest of Mabini, municipality of Urdaneta, Province of Pangasinan.

The above-mentioned acts of the complainant caused Bishop Manuel N. Aguilar, the president of the Supreme Council of Bishops on December 1, 1945, to write a letter to Mons. Fonacier, charging him with having violated the constitution of the church by not submitting an accounting of the funds and properties of the church, by consecrating bishops without the confirmation of the Council of Bishops and by transferring the central office of the church without the knowledge and consent of said ecclesiastical body (Exhibit 5).

In order to thresh out these charges, a general assembly of the church was called on January 22, 1946. In his

capacity as secretary-general of the church, the accused Mons. Isabelo de los Reyes, Jr., made efforts to effect a reconciliation between Mons. Remollino and Aguilar, on the one hand, and Supreme Bishop Fonacier, on the other, by suggesting that they submit their differences before the Supreme Council of Bishops; but the complainant rejected this proposal and insisted that only a letter of apology from Bishops Aguilar and Remollino would bring about a solution of the controversy. Notwithstanding this rebuff, the accused herein did not cease in his efforts to reconcile the two factions and once more begged Mons. Fonacier to lay the dispute before the Supreme Council of Bishops, but again the complainant turned down the offer of conciliation.

A meeting of the Supreme Council of Bishops was called on January 21, 1946, which was attended by nine bishops, while six others, including the complainant, were absent. At said meeting, a letter of the complainant challenging the authority of Bishop Aguilar to call said meeting on the ground that the Supreme Bishop had decreed the expulsion of Bishops Aguilar and Remollino, was submitted before said body, but the Supreme Council ruled that said expulsion was void as it was not submitted to, and approved by the council. And acting on the charge filed by Bishop Aguilar, the Supreme Council of Bishops approved a decree of enforced resignation of Mons. Fonacier as Supreme Bishop.

On January 22, 1946, the general assembly of the church was held. Supreme Bishop Fonacier did not attend, but sent his answer to the charges filed against him (Exhibit G). At said meeting, the general assembly approved the decree of enforced resignation (Exhibit 17), and forthwith elected Bishop Gerardo M. Bayaca as Supreme Bishop (Exhibit 18). Supreme Bishop Fonacier was accordingly notified of his removal and was required to turn over all the funds, documents, and other properties of the church to his successor. The complainant having refused to comply with said order, the Philippine Independent Church filed an action for replevin with the Court of First Instance of Manila (civil case No. 72138), for the recovery of the properties and funds of the church he was "up to now illegally withholding." Said case is now pending in the lower court (Exhibit 4).

Following the meeting of the grand assembly of the church held on January 21, 1946, and the confirmation and promulgation of the decree of enforced resignation (Exhibit 17) approved by the Supreme Council of Bishops, the division of the Philippine Independent Church into two rival antagonistic factions, which was noticeable since previous months, became a *fait accompli*. Efforts were made by prominent persons not connected with the church to reconcile these factions and settle the controversy. The com-

plainant submitted certain proposals which the accused suggested that they be submitted to the grand assembly for decision, but Bishop Fonacier, probably sensing that he was in the minority, rejected this counter-offer.

At this stage of the affairs of the Philippine Independent Church, which was threatening to disrupt the organization of that religious body, Leon Verano, president of the committee of laymen of the church in Batac, Ilocos Norte, and one of the most influential supporters of the Aglipayan Church, made an attempt to bring about a reconciliation of the antagonistic factions. On the eve of the meeting of the general assembly of the church, he personally invited the accused and the bishops of the church to a meeting with Bishop Fonacier in the house of the late Mons. Gregorio Aglipay, at 224 General Solano Street, Manila. Bishops Bayaca, Aguilar, the accused and others came to the place of the meeting, but the complainant Bishop Fonacier chose not to attend the same. Then those present sent Father Yoro to see Bishop Fonacier to remind him of the meeting and to invite him thereto. Father Yoro returned and reported that Bishop Fonacier said that his proposals had been made through Secretary Gallego of Public Instruction and that his last word was that the Supreme Council of Bishops should either take them or leave them.

On September 1, 1946, the general assembly of the Philippine Independent Church met at the parish church at Maria Clara, Manila, and according to the constitution of the church, elected the accused Mons. Isabelo de los Reyes, Jr., *Obispo Máximo* or Supreme Bishop. On the same date, the complainant Mons. Fonacier, with some followers who rebelled against the majority in their own church, met at the Manila Hotel and elected Bishop Juan Jamias as their Supreme Bishop. Thus, it came about that, from that date, the Philippine Independent Church had two Supreme Bishops. According to Exhibit 2, a certified statement issued on May 22, 1947, by the Director of the National Library, the faction of the Philippine Independent Church under the accused Mons. Isabelo de los Reyes, Jr., had 19 bishops and 252 priests; while under Mons. Juan Jamias there were 10 bishops and 46 priests. In conformity therewith, on June 23, 1947, the Secretary of Public Instruction promulgated an order to the effect that Mons. Isabelo de los Reyes, was recognized, for administrative purposes, "as the sole head of the *Iglesia Filipina Independiente*," and that applications of priest of the *Iglesia Filipina Independiente* for permits to solemnize marriages would be granted provided it is shown thereon that they recognize Mons. Isabelo de los Reyes, Jr., as the "Obispo Máximo" of the church they represent (Exhibit 26).

Furthermore, according to Exhibit 28, the accused, pursuant to the provisions of sections 154-164 of the Cor-

poration Law, was duly registered as a "corporation sole for the administration of the temporalities of the Philippine Independent Church." There is, therefore, no dispute about the fact that the accused is the sole and only legitimate head of said church.

The above facts considered in connection with the assignment of errors made by counsel in the brief filed in behalf of appellants bring for our consideration and determination two main questions, i.e.: *Firstly*, whether or not Exhibit A is libelous; and *Secondly*, granting that said document is libelous, is the same a privileged communication?

I. As to the first point, a thorough discussion of the question herein involved, which will lead us to a just determination of the same, requires the examination of the contents of the above-mentioned Exhibit A, which is quoted verbatim hereunder:

"September 18, 1950

"Don LEÓN VERANO
Batac, Ilocos Norte

Mi respetable Don León:

"Tengo el privilegio de invitar a Vd. a mi toma posesión del Obispado Máximo el próximo 14 de octubre. Entre los invitados figuran el Presidente Roxas y el Vice Presidente Quirino. Me atrevo a asegurar que esta vez Vd. estará ya con nosotros, al igual que Mons. Juan P. Kijano, Presidente de la Asamblea en el Dancing Pavilion del Hotel Manila. Olvidemos todo lo pasado y empecemos a curar las heridas de nuestras recientes rencillas.

"No existen dos facciones en nuestra Iglesia, como no existe más que una Iglesia Católica, Apostólica, Filipina, Independiente. En esta Iglesia, como en toda institución o gobierno democrático la voluntad de la mayoría una vez expresada se impone sobre todos, aún sobre los de cualquier minoría. Así es y así debe ser.

"Mons. Fonacier no es una facción. Es un DISIDENTE, y nada más. Un soldado no forma un regimiento, ni siquiera una compañía. Aún la Corte Suprema un disidente no forma decisiones, forma la opinión contraria a la mayoría y carece de toda fuerza legal. En nuestro caso, querido y piadoso Don León, Mons. Fonacier es un disidente que intenta desesperadamente embrollar los hechos para evadir su responsabilidad en una cuestión muy material, cuestión de dinero: los miles de pesos de nuestra Iglesia que retiene en su poder sin haber dado cuenta de los mismos.

"En esto debió haber terminado hace ya mucho tiempo; pero nuestro elocuente ex-Obispo Máximo demuestra muy poca prisa en vindicar su inocencia, y hasta la fecha ha conseguido ya cerca de una docena de transferencias de la vista de nuestra causa civil. Ay! Don León, la rendición de cuentas se puede posponer, pero tarde o temprano tiene que librarse.

"Esta mañana he presenciado en el cine la 'Caída de Berlín.' Allí compruebo cómo los peores dictadores de la humanidad acaban por rendir cuenta de sus pecados. ¿Qué lección tan ejemplar para nuestro dictadorcito que pretendió vanamente ser en una sola pieza; Obispo Máximo, Obispo diocesano, Senador, Rector, Tesorero, Abogado, Cobrador, Auditor, Reparador de Seminarios, Consagrador de mocosos en gran escala, y últimamente, para embrollar las cosas, pretende erigirse en defensor de la fe y del santísimo Rosario! ¿Cuánto lo gustaría a nuestro fracasado que la Iglesia Filipina se

limitase a Ilokos y Pangasinán? Pero aún allí muchas parroquias acaban de abandonarle. Bintar, Pasukin, Bacarra, Badoe, Sinait, Cabugao, Bangui, etc., etc., ya están en manos y posesión de los auténticos, democráticos, genuinos y valerosos Aglipayanos.

"Le invito fraternalmente, Don León, para visitar Suiza con Mons. de Vega y asistir al Sínodo de las Iglesias Católicas Ortodoxas de Europa. Nuestra Iglesia ha sido invitada por mi conducto para enviar delegados por el Arzobispo de Constanza. Se ofrece viaje, etc., gratis. ¿Acepta, Don León? Es cuestión de seis meses fuera de Filipinas. Vd. podrá visitar París, Roma, Madrid y aún Jerusalem gratuitamente y en primera. El Juez Ocampo está dudando en ser otro de nuestros delegados. ¿Qué dice, Don León?

"Fraternalmente y esperando su contestación,

(Fdo.) ISABELO DE LOS REYES, Jr."

We have purposely refrained from inserting in this decision an English translation of the above-quoted Spanish original so as to avoid the possibility of any misinterpretation of its terms. Upon our careful perusal and analysis of the words and phrases used by the writer of Exhibit A and the thoughts that he meant to convey thereby, we fail to discover, even remotely, the presence of any word or phrase which would place said Exhibit A within the pale of the Libel Law, as embodied in article 353 of the Revised Penal Code. According to said article, "a libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."

In his letter Exhibit A, which was written on September 18, 1946, when he had already been elected to the position of Supreme Head of the Philippine Independent Church, the accused was inviting Leon Verano, a prominent lay member of the church in Batac, Ilocos Norte, to attend his consecration as Supreme Bishop of the church on October 14. He was earnestly asking Leon Verano to be present at said religious ceremony and to forget their past differences for the good of their organization. Mons. De los Reyes said that there could be no two factions in the Philippine Independent Church and that since the will of the majority had been expressed, it was the duty of the minority to abide by it. He further added that Mons. Fonacier was only a "dissident" because he did not represent any faction in the church. In this connection, the writer of Exhibit A brought attention to the duty of the complainant Mons. Fonacier to make an accounting of the funds and properties of the church which was still pending, and which should have been done long time ago in order to allay any suspicion about the complainant's true motives.

In another paragraph, the writer of Exhibit A makes reference to a moving picture, entitled "La Caída de Ber-

lín" (The Fall of Berlin) which he had just seen. Commenting thereon, Mons. De los Reyes said that sooner or later, dictators are bound to make an accounting of their sins, which in the opinion of the appellant is a good example for our little dictator who vainly claimed to be supreme bishop, rector, treasurer, lawyer, bill collector, auditor, etc. In the penultimate paragraph of his letter, the writer calls the offended party *Consagrador de Mocosos*. Evidently, the writer of Exhibit A, in using this expression, referred to the fact mentioned elsewhere in this decision that Mons. Fonacier consecrated as bishops inexperienced priests; because the Spanish word *mocoso*, among others, means inexperienced youth."

Said letter Exhibit A, considered as a whole or partially, does not show that it comes within the purview of article 353 of the Revised Penal Code. He was communicating his thoughts to a friend, a prominent lay member of the church, who apparently had taken sides with the opposite faction in that controversy between the high authorities of the Philippine Independent Church. It must not be forgotten that the defendant-appellant only participated in the controversy during its last stages. It should be remembered that the dispute originally started between Bishops Remollino and Aguilar, on the one hand, and the complainant, on the other. The statement of facts shows that Bishops De los Reyes kept himself aloof from the imbroglio, and decided to show his hand only when he noticed that the rift between the contending parties had been so acute that it was threatening the very existence of the church. It was only then, to save the unity of his religious organization, that appellant took a direct part in the controversy, not to widen the cleavage between the contestants, but to settle the controversy and reunite the contending factions and to save the existence of the church.

Counsel for appellant during his argument of his case stated that if according to the prosecution, Exhibit A is insulting, Exhibit 3 is more so. Said Exhibit 3 dated September 19, 1945, was addressed to the complainant by Bishop Remollino who challenged the authority of Mons. Fonacier to remove him from his position as bishop of Cavite, and said that the offended party had disregarded the provisions of the constitution of the church, that Mons. Fonacier had no power to remove nor transfer a bishop from one place to another and that the Supreme Council of Bishops had solemnly declared the nullity of his actuations when the complainant attempted to remove him as bishop of Cavite. He was, therefore, challenging the offended party to take up the matter to the courts.

In the light of all the above considerations, even if it should appear that the letter Exhibit A may contain some derisive remarks against the complainant, yet, as a

whole, it is not defamatory and certainly not in violation of said article 353 of the Revised Penal Code.

II. We shall now discuss the second proposition, that is, whether or not Exhibit A is, as contended by appellant and notwithstanding the contrary view of the Solicitor General, a privileged communication. Our Libel Law, which was formerly Act No. 277, before it was finally incorporated into Chapter One of Title XIII, Book II of the present Revised Penal Code follows the principles of the American Law and Jurisprudence, after which it is patterned, regarding privileged communications.

The Revised Penal Code by its article 354 lays the foundation for the exceptions to the definition embodied in article 353, when it says that—

“Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

“1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

“2. A fair and true report, made in good faith, without any comments or remarks of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.”

It may be inferred from the above-quoted provision that the law recognizes *ipso facto* the existence of two kinds of privileged communications, or, putting it in a more concrete way, two ways of establishing the privilege recognized by law which may be either (1) absolute, or (2) conditional or qualified. An example of absolutely privileged communication is that provided for in Article VI, section 15 of the Constitution, whereby no senator or representative of Congress shall be questioned in any other place for any speech delivered or any statement made by him during a parliamentary debate.

It being clear that appellant is not covered by this kind of (absolute) privilege, we shall, therefore, test his case in the light of the qualified privilege extended to a private communication made by any person to another in the performance of any legal, moral or social duty. It can not be denied that this qualified privilege is applicable to appellant because he wrote Exhibit A in the performance of a “legal, moral or social duty.” In this connection, and in view of the fact that as clearly explained in the preceding statement of facts the question involved herein resulted from a controversy between the dignitaries of a religious body, we deem it most appropriate to quote hereunder the following:

“While it seems that no privilege attaches to defamatory statements made by a clergyman from his pulpit, a different rule governs communications between church members and authorities in respect of organizational and administrative matters; and the courts appear

to agree that in the absence of malice, members may discuss the character of their pastor, communicate rumors of misconduct to each other, and prefer charges whenever there appears to be any foundation therefor. In the event charges are filed against a member, officer, or minister, witnesses for both prosecution and defense may testify at the trial without fear of liability, and the result of the proceedings may be announced in open church or published in the church's official newspaper. So, in the absence of malice, members of a church session cannot be said to be guilty of libel merely because they excommunicated an adherent; nor can a clergyman be held liable for slander in passing a communicant without comment when administering the sacrament of the Lord's Supper. It is clear, however, that the doctrine of privilege in regard to church matters has its limitations. * * * (33 Am. Jur., 132-134.)

Tested by the principles embodied in the above-cited paragraph, and taking into account that Exhibit A was addressed by appellant to Leon Verano, president of the committee of the laymen in Batac, Ilocos Norte, one of the strongest pillars of the Aglipayan Church, who, as already stated elsewhere in this decision, made efforts to conciliate the parties concerned in the controversy by trying to bring them together to a conference, and further that when defendant wrote Exhibit A he had already been elected Obispo Maximo or Supreme Head of the Philippine Independent Church, whose very existence was threatened by the stubborn attitude of the complainant who had been deposed as Obispo Maximo by the Supreme Council of Bishops, his stand in the matter should, under the circumstances, be judged in the manner it was taken.

Leon Verano having taken sides with Bishop Fonacier, it was only natural and logical that appellant should appeal to his sentiments and feelings as a prominent member of the church to change his attitude for the sake of the existence and unity of the church. The motive that guided appellant in writing that letter Exhibit A to Leon Verano could not, therefore, be more plausible and legitimate and should not be misinterpreted. His intention was to preserve the unity of the religious organization of which he had just become the supreme head.

In the case at bar, the existence of the qualified privilege invoked by appellant undoubtedly exists; in fact he was not reporting to a superior certain existing conditions affecting his religious organization, but on the contrary, as the Supreme Head of the Philippine Independent Church, he was doing his best to enlighten a prominent lay member of the church on certain conditions, in order to convince him that he should change his attitude in the premises by accepting the existence of a situation which had already been passed upon and decided by the Supreme Council of Bishops. Thus, in *Warren vs. Pulitzer Pub. Co.*, 78 S.W. 2 (1934), 413-416, the Court held:

"Every man has a right to discuss matters of public interest. A *Clergyman with his flock*, an *admiral with his fleet*, a *general with*

his army, a judge with his jury, we are all of us the subject of public discussion." The view of our own court has been thus stated: 'It is only in despotisms that one must speak sub rosa, or in whispers, with bated breath, around the corner, or in the dark on a subject touching the common welfare. It is the brightest jewel in the crown of the law to speak and maintain the golden mean between defamation, on one hand, and a healthy and robust right of free public discussion, on the other.' *Diener v. Star-Chonical Pub. Co.*, 230. Mo, 613, loc cit. 630, 132 S.W. 1143, 1149, 33 L.R.A. (N.S.) 216. The difference between discussion and defamation is well stated, as follows: 'It is not the law that, because a man fills a station before the public eye, he becomes thereby a target . . . Public station may ever be purified, never vilified.' *Shortleff v. Stevens*, 51 Vt. 501, 31 Am. Rep. 608. But every one who would assume responsibilities of leadership, either in politics, in religion, or in thought puts in issue to some extent at least, his character, his good faith, his ability, and his sincerity, and those qualities become matters of importance and interest to all other citizens and any individual or newspaper has the right to fairly and reasonably discuss them.

* * * * *

"* * * Thus the general cause of public morality which underlies all good government, and which every good citizen, be he priest or layman, is bound to promote, is affected by the fidelity with which ministers of the gospel discharge the high trust of their appointment. In order to be successful public teachers of morality, they must be unspotted public exemplars of it. Hence, if it be suspected that a wolf in sheep's clothing has invaded their ranks, and sits at their council board, it is not only for the interest of all the members of the association to know the fact, but is their imperative duty to make inquiry and ascertain the fact.

"Ministers of the gospel are spiritual teachers and leaders of the people. Their influence and the influence of the church which sponsors them is great. It must be obvious, therefore, that proper qualifications and character for such a position are matters of public concern, especially in a country, such as ours, where there is complete religious freedom and the appeal of every church is solely the character of its teachings and sincerity of its leaders. Facts relating to these things are news, which we think are matters of importance both to members of the church everywhere and to the general public as well, because 'the general cause of public morality which underlies all good government * * * is affected thereby.'" (*Warren vs. Pulitzer Pub. Co.*, 78 S. W. 2nd (1934), 413-416.)

Coming now to the question whether appellant acted with malice in writing and sending Exhibit A to Leon Verano, we note that the appellee quotes the following definition of "malice" made by Justice Street in his work, *Foundations of Legal Liability*, quoted in *U. S. vs. Cañete* (38 Phil., 253). According to said author, malice is "a term used to indicate the fact that the defamer is prompted by personal ill-will or spite, and speaks not merely in response to duty, but merely to injure the reputation of the person defamed."

It is a matter of record that the fight in the Aglipayan Church that threatened its unity grew out not of any personal enmity or rivalry between Bishop De los Reyes and Bishop Fonacier, but between the complainant and Bishops Romollino and Aguilar, because the former wrote Bishop

Romollino the letter Exhibit 2, enjoining Bishop Romollino from assuming his duties as Bishop of Cavite, whose assignment to that diocese had been approved by the Supreme Council of Bishops at its meeting held on September 2, 1945 (Exhibit 9). Bishop Romollino resented the attitude of the Supreme Bishop Fonacier and sent the latter his letter Exhibit 3, which is couched in a rather defiant language. Bishop Fonacier regarded the writing of the letter Exhibit 3 as an act of insubordination on the part of Bishop Romollino, and believing that Bishop Aguilar had instigated and caused the sending of Bishop Romollino's letter, without preferring formal charges and without hearing them, or consulting the Supreme Council of Bishops on the matter, expelled from the church Bishops Romollino and Aguilar. Thus, the trial Judge, in commenting on this phase of the controversy, says the following:

"In the dispute between Bishop Romollino and the complainant other bishops of the church took sides with the parties to the controversy. Believing that Bishop Manuel L. Aguilar, then of the diocese of Laguna, was the instigator of what he considered acts of insubordination and a campaign of defamation and vilification against him, the complainant, on October 8, 1945, expelled both Bishops Romollino and Aguilar from the church so as to insure discipline, according to him. The complainant testified that the expulsion was approved by the supreme council of bishops on October 16, 1945, but the accused denied complainant's allegation and the minutes of the session of the council on October 17 and 18, 1945 (Exhibits 10 and 11), fail to confirm the complainant."

The conflict which at the beginning was confined between Bishop Fonacier on the one hand and Bishops Romollino and Aguilar on the other, became, therefore, more critical when the complainant, then still Supreme Bishop, at the meeting of the Supreme Council of Bishops held on September 2, 1945, personally proposed the consecration as bishops of four priests, and the council unanimously rejected two of the nominees and only approved the other two. Needless to say, this rebuff greatly affected the *amour propre* or self-esteem of the complainant who must have perceived that his influence and moral authority over his bishops was waning.

It will be observed that up to this stage of the controversy, the accused had not taken part in the discussion between the complainant and Bishops Romollino and Aguilar and the others. The evidence, rather than showing the existence on the part of the accused of any feeling of personal animosity towards Mons. Fonacier, reveals that appellant guided himself by his sense of duty and loyalty towards his church and his sincere desire to maintain harmony among its highest dignitaries, exerted all efforts to bring about the reconciliation between Bishop Fonacier on the one hand, and Bishops Aguilar and Romollino and others on the other. Before his election as Supreme Bishop on September 1, 1946, he addressed on December 22,

1945, a letter which, by its wording and substance, reveals the spirit of harmony and reconciliation which moved him to write the same. It reads:

"Manila, 22 de Diciembre de 1945

"Ilmo. Mons. S. A. FONACIER,
Obispo Maximo.

"Mi querido y respetado compadre:

"Cumpliendo con lo que hemos hablado ayer, tuve una entrevista con el Obispo Aguilar a quien expuse claramente sus proposiciones para el remedio del desacuerdo que tratamos de zanjar.

"Sobre la rendición de cuentas, le informé que Vd. no tiene inconveniente alguno en someterlas al Concejo Supremo. El Obispo Aguilar me reiteró que nunca ha dudado de su honradez ni integridad, pero solo desea que se cumpla con lo mandado por nuestras Reglas,

"En cuanto a la consagración de obispos, le informé que Vd. sostiene que es una facultad privativa del Obispo Máximo la de nombrar y consagrar Obispos, citando en su apoyo la practica seguida por el fundador de la Iglesia Mons. Aglipay. El Obispo Aguilar me repitió por su parte que el sostiene que dicha facultad no es privativa ni exclusiva del Obispo Máximo, sino que es una facultad que solo puede ser ejercida validamente con la expresa concurrencia del Consejo Supremo. Le dije asimismo que Vd. como medio de compromiso para el arreglo, esta dispuesto a considerar a los obispos ya consagrados por Vd., pero no sancionados por el Consejo Supremo, como obispos honorarios, una especie de 'prelados domésticos,' sin facultades para ordenar, confirmar y para formar parte del Consejo Supremo de Obispos ni de la Asamblea General. El Obispo Aguilar opina que esto debe someterse al Consejo Supremo para su determinación.

"He informado al Obispo Aguilar que el traslado de la Oficina no es definitivo, y que Vd. está dispuesto a tenerla en Manila con tal que encontremos local donde instalarla.

"Por lo que veo el desacuerdo no es de imposible solución. Yo por mi parte, que la principal cuestión a resolver aqui es la de las consagraciones, y que las otras se resolverán por si mismas, incluso el deseo de Vd. de que los Obispos Aguilar y Remollino le hagan una sencilla y sincera apologia.

"He sugerido al Obispo Aguilar que es necesario que convoquemos una reunión del Consejo Supremo para el 15 de enero próximo, a fin de tratar exclusivamente de estas cuestiones, particularmente la de consagración de obispos, que debe gozar de prioridad. Con esto y con la ayuda de los Obispos, guiados por el deseo de preservar la unidad de la Iglesia, creo que podemos hallar la solución a esta amarga controversia, respetando naturalmente lo que la mayoría de los Obispos resuelva en la forma más adecuada y satisfactoria para ambas partes. El Obispo Aguilar está conforme en que convoquemos a los miembros del Consejo Supremo, pero no para el 15 de enero de 1946, sino para el 18 de enero, pues, en los días 15, 16 y 17 de dicho mes estaré en San Pablo, Laguna, y el 19 será la fiesta de Tondo. He entendido de nuestra conversación ayer que Vd. está también conforme con este medio.

"Le ruego, pues, me informe por conducto de esta, si a Vd. le place la fecha propuesta por Mons. Aguilar a fin de que pueda yo hacer la necesaria convocatoria a los Sres. Obispos.

"Suyo muy respetuosamente,

(Fdo.) I. DE LOS REYES, Jr."

It being undeniable that the sincere attempts to reconcile the two factions of the church were frustrated by the attitude of the complainant, it would be unjust to brand

the appellant guilty of malice, when in fact the record shows that it was Bishop Fonacier, and a few others who were supporting him, who sabotaged all efforts made by the majority of the bishops of the church, including the defendant, to preserve the existence and unity of their religious organization.

It can not, therefore, be stated that appellant acted by reason of ill-will or spite against complainant Fonacier when he addressed to the latter the letter Exhibit A. As aptly stated by counsel for appellant, even the prosecution in defining "malice", says that ill-will must be personal in order to constitute malice. So if ill-will is engendered by one's sense of justice, or other legitimate or plausible motive, such feeling is not malice. It is, therefore, undeniable that the letter Exhibit A was not written by appellant in order to boost or insure his election to the highest position of the church and to defeat the purpose of complainant Fonacier to continue as *Obispo Maximo*; it is a fact that said exhibit was written and sent by appellant to Leon Verano when he had already been elected to such position, and for no other purpose than to preserve the unity of the church.

Our attention is drawn by counsel for appellant that the prosecution has failed to show malice on the part of the defendant. In *U. S. vs. Bustos* (37 Phil., 731), it was said that malice can be usually presumed from defamatory words. But privilege destroys the presumption and the *onus* of proving malice then lies on the plaintiff, that is, it shifts upon the plaintiff the duty of proving the existence of malice as the true motive of the conduct of defendant. In *U. S. vs. Cañete*, a similar rule was laid down when the Supreme Court held that the publication complained of is such that "in the absence of express malice, it is privileged, the burden of proving malice rests with the plaintiff." (38 Phil., 253.)

In view of all the foregoing, and since the prosecution has failed to prove the guilt of appellant of the charge filed against him, we, therefore, acquit the defendant-appellant and reverse the judgment appealed from, with costs *de oficio*. So ordered.

Endencia and Felix, JJ., concur.

Judgment reversed; accused acquitted.

[No. 1547-R. June 13, 1949]

PRIMO SORIANO, plaintiff and appellant, *vs.* ALEJANDRO MELENDEZ, defendant and appellee

1. EVIDENCE; PAROL EVIDENCE; ADMISSIBILITY.—Parol evidence of the sale of land is admissible, when the action is not for a violation of the contract or for the performance thereof. (Moran's Comments on the Rules of Court, Vol. III, pp. 165-167.)

2. HUSBAND AND WIFE; NATURE OF PROPERTY ACQUIRED DURING THE MARRIAGE IN THE NAME OF WIFE ONLY.—Property acquired during the marriage of the spouses even if the acquisition was made in the name of the wife alone should belong to the conjugal partnership, unless there is evidence to the contrary.

APPEAL from a judgment of the Court of First Instance of Pangasinan. Gonzales, J.

The facts are stated in the opinion of the court.

Jose F. Bautista for appellant.

Sulpicio R. Soriano for appellee.

DE LEON, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan, the dispositive part of which reads as follows:

"Wherefore, the preponderance of the evidence, oral and documentary, in favor of the defendant having been clearly established, the Court hereby renders judgment in favor of the defendant and against the plaintiff, declaring the deed of sale with right to repurchase (Exhibit 1) legal and valid; the complaint is, therefore, hereby dismissed, with costs against the plaintiff."

Appellant contends that the lower court erred in holding that the land in question was the conjugal property of the deceased spouses Nicolas Soriano and Felipa de Guzman; in admitting over and above his objection the parol evidence regarding the sale of said land by its former owner Diego de Guzman in favor of the said spouses and the sale made by the latter with right to repurchase in favor of the defendant-appellee for ₱300; in holding that the plaintiff failed to repurchase it within the time agreed upon; and, finally, in not allowing the appellant to repurchase said land and awarding damages to the latter.

The subject-matter of this litigation is a fishpond containing an area of 51 ares and 41 centares more or less, situated in barrio Caloocan Norte, Binmaley, Pangasinan, which the former owner Diego de Guzman sold to the spouses Nicolas Soriano and Felipa de Guzman, and which plaintiff-appellant contends was sold to Julio de Guzman who in turn donated it to his daughter Felipa de Guzman. Alejandro Melendez, the defendant-appellee, who has been in possession of said fishpond since 1926, testified that the spouses Nicolas Soriano and Felipa de Guzman in the year 1926 sold the land to him for ₱300 with the right to repurchase within four years and requested him not to require them to execute a written contract until after the lapse of said period of time, which he willingly granted as Felipa and his wife were close relatives.

The plaintiff is the only surviving heir left by the spouses Nicolas Soriano and Felipa de Guzman who claims

the right to have inherited the herein-above-mentioned fishpond from his mother who died in year 1930. He bases his contention on the fact that said fishpond was transferred directly from the original owner to his mother as shown by Exhibit 3, and on his own father's alleged statement who requested him to redeem said fishpond from the defendant in whose favor he mortgaged it and gambled the proceeds away. Plaintiff further stated that the defendant promised first to allow him to redeem said fishpond as soon as he had the means, but later on refused him said right on the ground that the time within which redemption could be made had elapsed and that he had already consolidated his ownership thereof.

Diego de Guzman, the original owner of said fishpond, testified that he first offered to sell it to Julio de Guzman, father of Felipa de Guzman, but as Julio had no money, he sold it to the spouses Nicolas Soriano and Felipa de Guzman. He was not, however, sure whether a document was executed or not. Valeria de Guzman, a niece of Diego de Guzman and sister of Felipa de Guzman and mother-in-law of the defendant Alejandro Melendez, testified that said fishpond was also offered to her by Diego, but as she had no money at the time, it was sold to the spouses Nicolas Soriano and Felipa de Guzman, without executing any document, and that the latter in turn sold it with *pacto de retro* to appellee Alejandro Melendez with the understanding that no deed of sale would be executed until after the expiration of the period to repurchase. In or about the year 1930, Felipa died and Nicolas had to secure a loan of ₱37 from Alejandro Melendez to be added to the purchase price of ₱300 or a total of ₱337 of said fishpond, and because of the inability of Nicolas Soriano to repurchase it within the period of four years, Alejandro consolidated the ownership thereof in his favor. Agustina de Guzman testified having witnessed the sale with *pacto de retro* of said fishpond in favor of Alejandro Melendez by the spouses Nicolas Soriano and Felipa de Guzman who invited her on February 2, 1926 to the house of the buyer, so that she could receive the ₱60 which said spouses owned her, she having had possession of the said fishpond for one year as security for the payment of said loan of ₱60.

The foregoing testimony of the old man Diego de Guzman, whom both parties admit as the original owner of the fishpond in question, completely disproves the theory of the plaintiff that said original owner had sold the fishpond to Julio de Guzman, who in turn donated it to his daughter Felipa de Guzman. Said testimony is corroborated by Valeria de Guzman, sister of Felipa and mother-in-law of defendant Melendez. There being nothing in the record which vitiates the testimonies of

said witnesses, greater weight must be accorded to them rather than to that of plaintiff's witness Jorge Bautista, who was a mere adjoining owner.

It should be stated, however, that attorney Jose Bautista who took the witness-stand on behalf of his client (the plaintiff-appellant), testified that Nicolas Soriano and Alejandro Melendez went to see him on November 1, 1930 to ask him to prepare a deed of sale of said fishpond to be executed by the former in favor of the latter, and in this connection Exhibits 2, 3 and 4 were delivered to him for examination after which, he (Attorney Bautista) asked Nicolas Soriano why he was disposing of a property which belonged to his wife and warned the buyer that such an act would be illegal and void. Upon the insistent request, however, of Nicolas Soriano, who told him that he wanted to give his creditor Alejandro Melendez a security for the payment of his obligation and the promise on the part of Alejandro Melendez not to consolidate ownership, he prepared the deed of sale with right to repurchase which has been marked Exhibit 1.

For the purposes of establishing the damages alleged to have been suffered by the plaintiff consisting of the fish caught in the fishpond in the year 1945, until the restitution of the property to the plaintiff at the rate of ₱2,000 a year, Jorge Bautista, owner of a neighboring fishpond, testified that the defendant caught fish in the fishpond in question three times during the year 1945, worth ₱700, ₱600 and ₱500, respectively; in the year 1946, three times, ₱400, ₱300 and ₱40, respectively, and in the year 1947, two times, ₱40 and ₱30, respectively; that one-half of the proceeds of the sale of said fish should belong to the caretaker after deducting therefrom the costs of the fry; that he had learned of this from the defendant himself whom he used to ask as to how much was the proceeds of the sale every time fish was caught in said fishpond, but admitted not having kept any record of the information so gathered by him from said defendant.

Counsel for plaintiff-appellant in his second and third assignments of error contends that parol evidence of the sale made of the land in question by Diego de Guzman to the spouses Nicolas Soriano and Felipa de Guzman and the sale with *pacto de retro* made by the latter in favor of the defendant Alejandro Melendez was inadmissible, its admission being contrary to the provisions of the Statute of Frauds. This action not being one for a violation of the contract or for the performance thereof, the contention is clearly unmeritorious. Chief Justice Moran in his Comment on the Statute of Frauds has the following to say:

"Fundamental Principles.—The following are some fundamental principles governing the construction, application and extent of

the statute of frauds. A mastery of those fundamental principles is necessary for the correct understanding of the statute.

* * * * *

"The above ruling is important. It is applicable in the following cases: A buys a parcel of land from B. The purchase is not evidenced by a written agreement. X takes possession of the land. A filed an action for ejectment against X. A may introduce evidence as to his oral contract of purchase with B, because the action is neither for a violation of that contract nor for the performance thereof.

"A buys a piece of land from B. The contract is entered into verbally. Thereafter, B refuses to deliver the land to A. A filed an action against B. In this case, the action is for a violation of the contract of sale and inasmuch as the contract is merely oral it is unenforceable against B. It cannot therefore be proved.

* * * * *

"2. *The Statute of Frauds is applicable only to executory contracts; Contracts which are either totally or partially performed are without the statute.*—The statute of frauds is applicable only to executory contracts. It is neither applicable to executed contracts nor to contracts partially performed. The reason is simple. In executory contracts there is a wide field for fraud because unless they be in writing there is no palpable evidence of the intention of the contracting parties. The statute has precisely been enacted to prevent fraud. On the other hand, the commission of fraud in executed contracts is reduced to a minimum because (1) the intention of the parties is made apparent by the execution and (2) execution concludes, in most cases, the rights of the parties." (Morans' Comments on the Rules of Court, Vol. III, pp. 165-167.)

The evidence for the plaintiff consists of the oral testimony of the plaintiff himself regarding the alleged ownership of his mother and of Exhibit 3, which is a tax declaration of said land in the name of his mother transferred directly from that of the original owner Diego de Guzman. Tax declaration alone does not constitute evidence of ownership. It is true that the fishpond in litigation was transferred from the name of Diego de Guzman to Felipa de Guzman on the alleged sale made in favor of the latter, but said sale having taken place during the marriage of the spouses Nicolas Soriano and Felipa de Guzman, even if made alone in the name of Felipa de Guzman, it should belong to the conjugal partnership of Nicolas Soriano and Felipa de Guzman, unless there is evidence to the contrary, and the weight of evidence, as the record shows, is overwhelmingly in favor of the theory of the defense.

Even granting for the sake of argument that the fishpond in question was the paraphernal property of Felipa de Guzman, nevertheless, considering that same was sold by both spouses under a *pacto de retro* to Alejandro Melendez in 1926, four years before the death of Felipa de Guzman, although no document was executed covering said sale until after her death and because of her husband's inability to repurchase it the same was definitely sold to Alejandro Melendez by the surviving spouse, said sale

should be held valid, it having been made by her and her husband during her lifetime, although it was consummated only after her death.

Wherefore, the decision appealed from, being in accordance with the law and the weight of the evidence, is hereby affirmed, with costs against the appellant.

Concepcion and Dizon, JJ., concur.

Judgment affirmed.

[No. 3064-R. June 13, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. ELISARDO SANTOS Y CRUZ, defendant and appellant

CRIMINAL LAW; COUNTERFEIT MONEY, ILLEGAL POSSESSION OF; POSSESSION WITH INTENT TO USE, PUNISHABLE.—Although the bogus bill in question was not passed or accepted by the person to whom it was handed in the course of the transaction, the crime was considered just the same as consummated because article 168 of the Revised Penal Code not only punishes those *who knowingly use* a bogus bill, but also those *possessing with intent to use* any such false or falsified instrument. Even if the uttering or use of the bogus note was not consummated, the crime of possessing a counterfeit bill with intent to use, which intent is shown by the attempt to pass it to the market vendor, must be considered as consummated and shall be punished in accordance with the provisions of articles 46, 61 No. 5, 65 No. 1, and 168 in relation to 166 No. 1 of the Revised Penal Code, article 61 as amended by Commonwealth Act No. 217, and of the provisions of the Indeterminate Sentence Act (No. 4225).

APPEAL from a judgment of the Court of First Instance of Manila. De Leon, J.

The facts are stated in the opinion of the court.

Romero and Romero for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Rafael P. Cañiza* for appellee.

FELIX, J.:

Elisardo Santos y Cruz was prosecuted in the Court of First Instance of Manila charged with illegal possession of a counterfeit ₱100 paper money, made in resemblance and similitude of paper bills of the same denomination, lawfully issued by the Bureau of Treasury, a departmental entity of the Government of the Philippines, which on November 24, 1947, he wilfully, unlawfully and feloniously, with intent to defraud, passed and uttered as genuine ₱100 bill to a vendor of chickens at the Obrero Market in this city of Manila. After hearing said defendant was found guilty and sentenced to suffer an indeterminate penalty of from four (4) years and two (2) months of *prisión correccional* to eight (8) years, eight (8) months and one (1) day of *prisión mayor*, to pay a fine

in the sum of ₱500, without subsidiary imprisonment in case of insolvency, to the accessory penalties of the law, and to pay the costs.

There is no controversy as to the *basic* facts on which appellant's prosecution was based. They are undisputed, and the only question raised by the defense dwells upon whether or not appellant Elisardo Santos y Cruz had guilty knowledge of the falseness of said counterfeit bill (Exhibits A and A-1), when he handed it over to Julia Antonino in payment of ten chickens he wanted to purchase. According to the evidence produced at the hearing, appellant, an alleged illiterate who had no schooling and does not know how to read and write, went at about 8 a.m. of November 24, 1947, to the Obrero Market, in Blumentrit Street, Manila. He approached the stall of Julia Antonino, selected ten chickens, agreed to the price of ₱2 each and gave her in payment thereof a ₱100 bill, bearing serial No. F-00747522, in the resemblance and similitude of a paper bill of the same denomination lawfully issued by the Bureau of Treasury (Exhibits A and A-1). Upon receipt of said paper bill, Julia noticed that the figure 7 in the serial number was marked with ink, and suspecting that it might not be genuine money, she took it to the office of the market master, which was very near to her stall, and inquired from one of the market employees as to the genuineness of said paper bill. Upon being told that it was a bogus money, Julia returned to her stall, where she had left appellant waiting, and then went back with him to the office of the market master. In that office an investigation ensued and appellant admitted having handed to Julia Exhibits A and A-1, which then formed only one piece because he wanted to purchase those ten chickens to present them to his cousin Emilio Pascual living in Tayabas Street who was to get married that day. It was at such investigation that the bill was accidentally torn into two parts, and that he was informed that it was bogus money.

When the investigation conducted by a market employee was about to be through, Julia entered again that office and asked appellant if he was going to get the chickens, to which he answered that he could not do it because he did not have enough money and did not know what would happen to him. Then he asked permission to leave in order to get what he had bought outside, but he was told to better wait for the market master. After a while appellant ran away from the office, and in so doing, he bumped against a vendor carrying a box of potatoes that fell to the ground. The vendor got mad and menacingly told appellant to pick up the potatoes, and while he was doing this he was overtaken by Adolfo Arámbulo, a clerk in the Obrero Market. The market master, Moisés Santos, then turned him over to Patrolman

Gloria, assigned in the market that day. At the Secret Service, appellant gave and subscribed to a statement (Exhibit B) wherein, in answer to a question as to how many pigs he had sold, he said that he had sold only one, and asked again for how much he replied that it was for ₱75.

Of record also appears that appellant further declared that he was a laborer working in the pier at a wage of ₱6 a day; that on November 20, 1947, he went to his hometown, México, Pampanga, returning to Manila about 2 or 3 days later with three pigs to sell them here in order to buy with the proceeds thereof some clothes for his sisters and defray other expenses; that upon his return from México he sold in the Divisoria market the three pigs to a Chinaman for the sum of ₱175, receiving in payment two ₱100 bills (one of which being Exhibits A and A-1), for which he had to give the change of ₱25; that one of the bills received from that Chinese was already changed by his friend Antonio de Luna whom he invited to eat with him, spending the sum of ₱5 in the meal; that he had already spent the change of the first ₱100 bill in buying clothes for his nephews and nieces; and that he did not know that Exhibits A and A-1 was bogus money.

At the hearing neither Emilio Pascual, the person to whom appellant was going to give the ten chickens on accounts of his marriage, nor his relatives that furnished him the pigs, nor the Chinese that purchased them in the Divisoria market and gave him the bogus money, were called to testify for the defense, and the only evidence produced to corroborate his statement regarding the pre-existence of the alleged three pigs sold, was the testimony of his brother Abelardo Santos.

It is a well-established principle of law in this jurisdiction that:

"To sustain a conviction of the crime of *uttering* a counterfeit bank note, as defined and penalized in Article 292 of the Penal Code (now article 168 of the Revised Penal Code), it must affirmatively appear that the accused knew that the note was counterfeit at the time it was uttered." (U. S. *vs.* De León et al., 4 Phil., 496; See also *People vs. Oliva*, 36 Official Gazette, 634.)

In the case at bar, does the record show guilty knowledge of the falseness of the counterfeit bill on the part of appellant? It is admitted that Exhibits A and A-1 is a counterfeit paper money that appellant had in his possession and used by handing it over to Julia Antonio in payment of a purchase. In such case

"The burden is upon the defendant to explain satisfactorily his possession of said counterfeit note." (*People vs. Co Pao*, 58 Phil., 545.)

This, according to the lower court, appellant failed to do, because no worthiness was attached to his version of

the case, which the trial judge considered as a Tartar tale (cuento tártaro). The trial judge who had the opportunity to observe the behaviour of the witnesses while testifying preferred to give more credence to the testimonies of the witnesses for the prosecution, and we find no error committed by him in so doing specially having in mind (1) that appellant's testimony in court concerning the number of pigs sold and their value is quite different from what he stated in Exhibit B; (2) the lack of proper and sufficient corroboration of his defense; and (3) the fact of having taken to his heels after he was told that the paper money delivered by him to Julia Antonino was a bogus bill.

"It often happens that persons conscious of guilt seek safety by flight even before they are suspected of any crime. The wicked fleeth when no man pursueth." (State *vs.* Deatherage, Wash. 326.)

Anyway, appellant has not satisfactorily explained his possession of the bogus bill for which he stands prosecuted as it was incumbent upon him to do.

The Solicitor General, after citing the articles of the Revised Penal Code applicable to this case, recommends that the penalty imposed by the lower court upon the defendant be modified. In order to properly pass upon this proposition, we deem it convenient to determine first of what offense the defendant was accused, and then to what stage he reached in the development of the crime, whether consummated or frustrated. Article 168 of the Revised Penal Code provides:

"Illegal possession and use of false Treasury or Bank notes and other instruments of credit.—Unless the accused be one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in his possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said article."

In the case at bar the appellant was accused of having executed two acts: (1) illegally possessing the counterfeit bill in question, and (2) using the same with intent to defraud, covered by article 168 of the Revised Penal Code. In the case of *People vs. Quinto*, 60 Phil., 351, the evidence for the prosecution disclosed that:

"In the evening of July 13, 1942, in Balatoc, municipal district of Itogon, sub-province of Benguet, the defendant was holding in his hand a twenty-peso bank note purporting to be issued by the Bank of the Philippine Islands, and wanted to play dice. Sixto Soriano, who also wanted to play dice, suggested that Quinto, before playing, should have the bill changed, and asked one José Rivera, a clerk in the Balatoc Mining Company, who was standing nearby, to change it; whereupon Quinto handed the money to Soriano who, in turn, handed it to Rivera. Somebody in the crowd shouted that the bill was counterfeit and Rivera took it to the light to examine it. As Rivera was holding the bill against the light, the accused snatched it from Rivera's hands and tore it to pieces."

In that case the defendant Quinto was found guilty of a consummated violation of article 168 of the Revised Penal Code in relation to article 166, for having in his possession, with intent to use, a false or falsified note in resemblance and similitude of a circulating note issued by a banking association duly authorized to issue the same. In the case at bar, like in the case of Quinto, the bogus bills were not passed or accepted by the persons to whom they were handed in the course of the transaction, but the crime was considered just the same as consummated because Article 168 not only punishes those who *knowingly use* a bogus bill, but, also the *possession with intent to use* any such false or falsified instrument.

In the case at bar the information charges the accused with (1) illegal possession of the counterfeit bill—Exhibits A and A-1; and (2) using the same with intent to defraud. So even if the uttering or use of the bogus note was not consummated, the crime of possessing a counterfeit bill with intent to use, which intent is shown by the attempt to pass it to the market vendor, must be considered as consummated and punished accordingly.

The penalty provided in article 168 of the Revised Penal Code for those falling within its provisions is the next lower in degree than that prescribed in the preceding articles, which in the case at bar is article 166 No. 1: *reclusión temporal* in its minimum period and a fine not to exceed ₱10,000, the document counterfeited being an obligation or security of the Philippine Islands. Now, the penalty next lower in degree to *reclusión temporal* in its minimum period and a fine not to exceed ₱10,000 is *prisión mayor* in its maximum period and a fine not to exceed ₱7,500 (Article 61, No. 5 of the Revised Penal Code as amended by Commonwealth Act No. 217 and *People vs. Co Pao*, 58 Phil., 645; *People vs. Gayrama*, 60 Phil., 796 and *People vs. Haloot*, 64 Phil., 739, overruling the doctrine laid down in the case of *U. S. vs. Fuentes*, 4 Phil., 404; and Article 75 of the Revised Penal Code.)

Wherefore, and premises considered, we hold appellant Elisardo Santos y Cruz guilty of the consummated crime of having illegally in his possession with intent to defraud a false and counterfeit treasury note, without the attendance of any mitigating or aggravating circumstances, and in accordance with the provisions of articles 46, 61 No. 5, 65 No. 1, and 168 in relation to 166 No. 1 of the Revised Penal Code, article 61 as amended by Commonwealth Act No. 217, and of the provisions of the Indeterminate Sentence Act (No. 4225), appellant is hereby sentenced to suffer from eight (8) years, eight (8) months and one (1) day to ten (10) years, eight (8) months and one (1) day of *prisión mayor*, to pay a fine of ₱500, without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties of the law, and to pay the

costs. With this modification as to the penalty, the decision appealed from is hereby affirmed. So it is ordered.

Torres, Pres., J., and Endencia, J., concur.

Judgment modified.

[No. 3221-R. June 13, 1949]

FELIPE GARCIA, plaintiff and appellee, *vs.* JOSE L. TALENS and LAUREANO ESTEFANIO, defendants; JOSE L. TALENS, defendant and appellant.

PURCHASE AND SALE; PROMISE "TO EXECUTE DEED OF SALE" OF LAND COVERED BY FREE PATENT; PERFORMANCE OF PROMISE CANNOT BE DEMANDED WHERE CONTRACT OF SALE IS VOID AB INITIO; CASE AT BAR.—The buyer of the land in question cannot demand performance of the seller's promise to execute the deed of sale, since the contract of sale, though perfected and consummated, was null and void *ab initio* because it was executed before the lapse of 5 years from the issuance of the free patent covering said land. It would be absurd to require the execution of a formal evidence of something which has no legal existence. Not being the owner of the property in question, plaintiff has no cause of action against the second buyer to annul the deed of sale formally executed in his favor by the original owner.

APPEAL from a judgment of the Court of First Instance of Nueva Ecija. Nable, J.

The facts are stated in the opinion of the court.

Ignacio Nabong for appellant.

Alfonso G. Espinosa for appellee.

CONCEPCION, J.:

This is an action to annul a deed of sale, executed by defendant Laureano Estefanio in favor of his co-defendant Jose L. Talens, involving a parcel of land situated in Siclong, municipality of Laur, province of Nueva Ecija, with an area of 8.7738 hectares; to compel Laureano Estefanio to execute a deed of sale of said property in favor of plaintiff Felipe Garcia; and to recover damages. In due course, the Court of First Instance of Nueva Ecija rendered a decision—from which defendant Talens only appealed—the dispositive part of which reads as follows:

"Bajo las consideraciones arriba expuestas, el Juzgado halla ajustado a derecho la contención del demandante y decide (1) declarar que el contrato de venta Exhibit 1 así como el contrato de 'quitclaim' Exhibit 2 sobre el terreno en cuestión y sus mejoras a favor de José Talens, nulos y de ningún valor, reservando cualquier derecho que tuviera dicha parte contra su co-demandado Estefanio; (2) ordenar la cancelación del Certificado de Título No. 19485 y (3) ordenar a Laureano Estefanio a expedir el correspondiente documento a favor del demandante Felipe García, con las costas a los demandados."

The main facts are not disputed. Defendant Laureano Estefanio was the registered owner of the property in litigation, which was covered by original certificate of

title No. 4747 (free patent) of the Province of Nueva Ecija, issued in his name. In November, 1938, he and plaintiff Felipe Garcia reached an agreement whereby Estefanio sold the aforementioned property to Garcia for the sum of ₱1,500, from which the amount necessary to settle a mortgage constituted in favor of the Philippine National Bank would be deducted. When the parties went to notary public Claro Pasis for the preparation of the corresponding deed of sale, Pasis advised them that the same could not be legally executed, less than five years having elapsed since the issuance of the free patent in favor of Estefanio. To circumvent the statute prohibiting the encumbrance or alienation of lands acquired under its free patent or homestead provisions, within five years from the issuance thereof, the parties agreed to and did, execute on November 14, 1938, a deed of mortgage on the improvements on said property—although there were no improvements thereon—with the understanding that Estefanio would execute the deed of sale five years later. On that occasion, Estefanio received ₱1,000 from Garcia, who retained the sum of ₱500 for payment of the mortgage debt in favor of the Philippine National Bank. Simultaneously, Garcia was placed in the possession of the land, which he has held continuously since then.

On August 3, 1943, however, Estefanio executed the public instrument Exhibit 1, whereby he sold the land in question to defendant-appellant Jose L. Talens, in consideration of the sum of ₱800 paid by the latter, who would redeem the property from the Philippine National Bank with such part of the purchase price as may be necessary therefor. Hence, the present action, which was begun on or about October 13, 1943. Sometime later, or on August 26, 1944, Estefanio executed the quitclaim deed Exhibit 2, whereby, after referring therein to Exhibit 1, he sold, assigned, transferred and waived in favor of Talens “any and all rights and interests or title in the land mentioned above reserved to” him (Estefanio) “by law” (referring, according to Talens, to the right of redemption reserved by the Public Lands Act to the holder of a free patent who sells the property covered by the same). Consequently, plaintiff alleges, Talens secured transfer certificate of title No. 19485 in his name, presumably upon cancellation of original certificate of title No. 4747.

It is urged, by appellant Talens, that, being contrary to Section 118 of Commonwealth Act No. 141, which provides:

“Except in favor of the Government or any of the branches, units, or institutions, or legally constituted banking corporations, lands acquired under the free patent or homestead provisions shall not be subject to encumbrance or alienation from the date of the approval of the application and for a term of five years from and after

the date of the issuance of the patent or grant, * * *." Italics supplied.)

the transaction between plaintiff Garcia and defendant Estefanio was and is null and void, for which reason, plaintiff Garcia has no cause of action against him. In reply thereto, plaintiff-appellee asserts that "his contention is absolutely untenable in view of the fact that the issue involved here is not a recognition of the existence of a sale of public agricultural land. It is merely an action to compel specific performance." While not expressing a definite opinion on this question, the lower court seemed to have assumed, or to be under the impression, that this is an action to compel specific performance of a "promise to sell" and that such promise to sell is not prohibited by law, thus accounting for the order, in the decision appealed from, directing Estefanio to execute the corresponding deed of sale in favor of the plaintiff Garcia and for the other reliefs granted by His Honor, the trial Judge. We cannot accept, however, either the said assumption, or the conclusion apparently drawn therefrom, or plaintiff's line of argument.

At the outset, it should be noted that plaintiff's complaint, as well as the evidence introduced by him and the decision appealed from, leave no room for doubt that—except as to the effect of the statutory prohibition thereon—the transaction between plaintiff and defendant Estefanio on November 14, 1938, was a *perfected and consummated contract of purchase and sale*. Estefanio had agreed to sell his land, and plaintiff had agreed to buy it, right then and there. The stipulated price was, thereupon, paid to the seller, who, in turn, delivered the land to the purchaser. The deed of conveyance was not executed because both parties know that their contract was expressly forbidden by law. To circumvent the same, Estefanio executed instead, a deed of mortgage on "all the improvements on my hand," although, admittedly, it had no improvements whatsoever. Again, Estefanio did not "promise to sell" the land to Garcia at some future time, for, insofar as both were concerned, the sale had taken place and the ownership had passed already to Garcia. What Estefanio promised then was to *execute the deed of sale* five years later, and this was the promise accepted by Garcia. In other words, both merely agreed to defer, for such period of time, the *execution* of the formal evidence of the sale they had perfected and consummated *then*. It follows, therefore, that the buyer cannot demand performance of the seller's promise to execute the deed of sale, inasmuch as the sale was null and void *ab initio*, and it would be absurd to require the execution of a formal evidence of something which has no legal existence, and that plaintiff is not the owner of the

property in question, for which reason he has no cause of action against Talens to annul the deed of sale executed in his favor by defendant Estefanio.

This notwithstanding, the lower court annulled the same stating:

“La cuestión pues, es, en vista de la existencia de dos ventas, ya que la primera no está rodeada de las formalidades requeridas por la ley, si la segunda es igualmente válida en vista de los ataques de fraude y engaño. En cuanto a los Exhibits 1 y 2, el Juzgado encuentra lo siguiente: Como un terreno que en 1938 valía P1,500 se va a vender en 1943 por P800? Si es realmente un contrato de venta el Exhibit 1 por P800, como así pretende el demandado Talens, y que le acusa de engañoso su codemandado Estefanio, hubo ser necesario suscribir un ‘quitclaim’ por P3,000 al año siguiente o 1944? Estas observaciones no encuentran satisfactoria explicación en el record, y la ausencia de ellos necesariamente abundan en favor de la contención de Estefanio de que tal venta era abnormal, para no decir fraudulenta * * *.”

The sum of P800 stated in Exhibit 1, as consideration for the sale therein made on August 31, 1943, is not necessarily insufficient, considering that the seller had, under the Public Lands Act, the right to redeem the property sold within “five years from the date of the conveyance” (Section 119, Commonwealth Act No. 141). Indeed, said right of redemption explains the deed of quitclaim (Exhibit 2)—to which it evidently referred—executed by Estefanio in favor of Talens in 1944, in consideration of the sum of P3,000. Again, notwithstanding the allegation, made by Estefanio in his answer, and the statement in his affidavit Exhibit D, to the effect that the agreement with Talens was merely one of guaranty, not a sale, Estefanio admitted, as witness for the plaintiff-appellee, that, although he (Estefanio) preferred a contract of the first type, Talens insisted on the second, and he (Estefanio) eventually agreed thereto. Furthermore, Estefanio has not only refrained from questioning the sufficiency of the consideration of the contracts Exhibits 1 and 2, and the validity thereof, as well as from filing a cross-complaint or cross-claim against appellant Talens, but, also, stated in his answer that, apart from the averments therein regarding the circumstances allegedly surrounding the execution of said instruments—which, his testimony showed, were not entirely correct—he has no more claim to make, at any time whatsoever, on the land in question (“wala na akong paghahabol na gagawin pa sa nasabin lupa magpakailan pa man”). In the light of the foregoing and of the fact that plaintiff herein has no right or cause of action to impugn said contracts (article 1302, Civil Code), we are of the opinion and so hold—without passing upon the right of Estefanio, if any (on which we do not express our view) to bring an action for the annulment of the quitclaim Exhibit 2,

despite the provisions of article 1306 of the Civil Code—that the above quoted conclusion of the lower court and the decision declaring said deeds null and void are not sufficiently justified under the circumstances of the case.

Appellant Talens contends that the lower court should have sentenced the appellee to pay damages for his failure to surrender the possession of the property in question to said appellant. There is, however, neither allegation nor proof that the latter had demanded from the former the delivery of said property.

Wherefore, the decision appealed from is hereby reversed and defendant-appellant Jose Talens absolved from the complaint, with costs against plaintiff-appellee, Felipe Garcia. It is so ordered.

Dizon and De Leon, JJ., concur.

Judgment reversed; appellant absolved from the complaint.

[No. 2656-R. June 14, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
RICARDO HINOLAN, defendant and appellant

1. CRIMINAL LAW; DISCHARGE OF FIREARM CALCULATED TO CAUSE ALARM OR DANGER; ART. 155 (1) (NOT ARTICLE 254) OF THE REVISED PENAL CODE, APPLICABLE.—The defendant is accused of illegal discharge of firearm against the house of J. M. at about midnight of April 25, 1947, there being no evidence that at the time he did so he knew that J. M. was in the house and that the shots were fired precisely at him or at the place where he was. The evidence shows that he had been firing his gun against the said house at random, at the door of the kitchen and the wall of the said house. There is no evidence that the accused knew that there were people in the house or in what part of the house they were, so that the firing may be said to have been made at a person or a group of persons in order that it may fall within the scope of article 254 of the Revised Penal Code, the provisions of which are alleged to have been violated. The acts, however, committed by the accused constituted undoubtedly a violation of the provisions of article 155 (1) of the Revised Penal Code for they were intended to cause alarm in the barrio where the shots were fired and a sure and positive danger to the persons in the house where they were aimed at especially under circumstances obtaining at the time.
2. PLEADING AND PRACTICE; COURTS; LIMITATION OF JUDGE'S INTERFERENCE IN THE CONDUCT OF TRIAL.—The records of the instant case show that there had been unnecessary interference on the part of the trial judge in the presentation of the case. "The exercise of his right to question witnesses, with a view to satisfying his mind on any material point which may present itself during the trial of a case over which he presides, must be done sparingly, judiciously, in order to avoid any criticism on the part of counsel" (*Abutan vs. Fernandez*, CA-G.R. No. 913, Aug. 30, 1947). He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity,

but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto. (Canon of Judicial Ethics adopted by the American Bar Association, published in Appendix T in Vol. III of Comments of the Rules of Court by Chief Justice Moran, p. 714, 2nd edition.)

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Cordova, J.

The facts are stated in the opinion of the court.

Perreño, Perreño & Flores for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Federico V. Sian* for appellee.

RODAS, J.:

In the evening of April 25, 1947, on the occasion of the celebration of "Santa Cruz de Mayo," Juanito Mata had several guests at his house in barrio Libertad, Escalante, Occidental Negros, among whom were José Magbanua, his daughter Presentacion, and one Ricardo Hinolan, who approached and asked Presentacion to dance with him, and the request having been denied on the ground that the latter was not feeling well, Hinolan admonished her not to dance with another to avoid trouble. José Magbanua who overheard the admonition, either apologized for her daughter's fault or started to take her home, but Ricardo upon noticing that Presentacion was leaving with her father, or because the latter got hold of his neck, and boxed him on the jaw, as he said, the two grappled with each other, but people separated them and both went home. A few minutes after Jose and Presentacion in company with Alejandro Mata arrived at their house, one shot was heard coming from the direction of Hinolan's house and then another nearer, as if the one firing such shots was approaching said house, and in fact the third shot hit and passed through the middle of the panel of the door of said house about four feet from the floor and hit the wall; the fourth, hit the lower portion of the wall, three feet more or less from the floor, then the Singer Sewing Machine where the bullet got stuck to the iron part of it; the fifth, hit the floor, lower portion, almost at two inches from the wall, passed through and hit the bench near the kitchen, and then the door of the kitchen and passed through its wall; and the sixth, hit the support of the wall, the stud, and then the frame of the altar and the upper portion of the wall on the opposite side. While the shots were being fired Ricardo Hinolan was shouting calling José Magbanua and daring him to come down as he would like to kill him. After

the first shot that hit the door of Magbanua's house was fired, Alberto Mata put out the kerosene light and those who were in the house, namely, Jose Magbanua, his wife Soledad, and his children Presentacion, Josefina, Leodegario, Eva, Linda, Jose, Jr. and Julio, and Alberto Mata, Filemon Mesa and five others flung themselves down to the floor to avoid being hit by the bullets, the last of which caused a part of the wooden frame to fall hitting Soledad at the buttock which made her say aloud "Carding, what are you going to do?" "Are you going to kill us?" to which the accused answered "tia Choleng, come down here; I will not do you any harm." For fear, Soledad went down and talked with the accused who asked for José Magbanua, and as he was told that the latter had not yet returned home, the accused asked Soledad to have Presentacion come down, for if she would not, he would shoot Soledad. Again for fear, Soledad asked Presentacion to come down. Both mother and daughter were taken by the accused to the house of his brother-in-law, Rodolfo de los Reyes, where affidavits were prepared for them to sign under promise on their part that as soon as José Magbanua returned to his house, they would take him to his house for an amicable settlement.

Early in the morning of the next day, José Magbanua went to the MP headquarters in Fabrica, Occidental Negros, to report the matter and sergeant Guadaña was sent to the scene of the crime to conduct an investigation. There he found the holes and marks caused by the bullets of the shots above stated in various parts of the house, and at the place pointed by the witnesses where the accused was seen standing in the night of the incident were found three empty shells marked Exhibits B, B-1 and B-2 and one unused ammunition as well as the bullet that got stuck to the Singer Sewing Machine.

The defense has tried to establish that because of the blow dealt by José Magbanua on Ricardo Hinolan the latter fell down flat on the floor and was rendered unconscious for a few minutes, after which he went home. When his wife noticed that he was lying down on his bed with a swollen jaw, she sent for her mother-in-law who came rushing, and upon seeing the son lying sick on his bed, dressed his wound and stayed the whole night to see what might happen. The accused, his wife, and mother, and one Eustaquio Montejo, who stated that he witnessed the beginning of the affray at Juanito Mata's house, testified that they did not hear any gun fire shot but once, and that it could not have been the accused who fired it, he was sick in bed the whole night up to the next day, and did not leave the house until after two days to file with the justice of the peace of Escalante a complaint against José Magbanua for physical

injuries, and for which the latter was tried and convicted and served a prison term of fifteen days.

Rodolfo de los Reyes denied having prepared affidavit at his house in the night of April 25, 1946 for the signature of Soledad de Magbanua and Presentacion Magbanua, or even seen then there, and stated that the truth is that it was Soledad de Magbanua who early in the morning of April 26 went to see him at his house in order to ask for his help to have an amicable settlement of the case and to prevent his brother-in-law, Ricardo Hinolan, from prosecuting her husband, and that, without promising Soledad any favorable result, he went to see Ricardo Hinolan and conveyed to him Soledad's request, but it was to no avail for Ricardo Hinolan did not yield to it.

The defense capitalizes the self-contradicting testimony of José Magbanua as to who started the fight between him and the accused at the house of Mata, and the contention is certainly well founded, for, as a matter of fact, José Magbanua was prosecuted for the assault he committed on Ricardo Hinolan and convicted of slight physical injuries from which decision he dared not appeal. For the purpose of this decision, however, suffice it to say that because Ricardo Hinolan felt himself slighted first by the refusal of Presentacion to dance with him and then by the blow on his left jaw he received from Magbanua which threw him to the floor and rendered him unconscious for sometime, taking into consideration his rather hot temper, as shown by the fact that he threatened to cause trouble should Presentacion dance with another, it is not at all improbable that he went home, took his gun, fired it while leaving his house and while walking toward Magbanua's and then upon reaching a distance of about twenty meters from said house fired more shots while daring José Magbanua to come down as he would like to kill him until his aunt Choleng stopped him from further firing his gun lest he would kill the people in the house, and then through threats succeeded in having his aunt Choleng come down as well as Presentacion and took them to his brother-in-law's house and there caused them to sign affidavits looking towards the settlement of the matter. This was proven not only through the testimony of Jose Magbanua, her daughter Presentacion, and Sergeant Guadaña who found the empty shells at the place where the accused was seen standing on the night of April 25 while discharging his gun which he was seen holding by José Magbanua who was peeping through the holes of the nipa siding of his house, and by Presentacion when she went down to talk to said accused.

The defendant is accused of illegal discharge of firearm against the house of José Magbanua at about midnight

of April 25, 1947, there being no evidence that at the time he did so he knew that José Magbanua was in the house and that the shots were fired precisely at him or at the place where he was. In fact, the evidence shows that he had been firing his gun against the said house at random, at the door of the kitchen and the wall of the said house. There is no evidence that the accused knew that there were people in the house or in what part of the house they were, so that the firing may be said to have been made at a person or a group of persons in order that it may fall within the scope of article 254 of the Revised Penal Code, the provisions of which are alleged to have been violated. The prosecution relies on some decisions of the Supreme Court of Spain on the matter quoted from volume 5 of Viada's Penal Code, but said decisions refers to cases in which the accused fired at the door of a house knowing that the person against whom the discharge was made was standing immediately behind said door in one case, and in another, the discharge was made against the window behind which the accused knew were his sweetheart and her brothers who were sleeping inside the room where the window was.

On the other hand, this Court in the case of *People vs. Cupin*, Official Gazette, No. 15 (115), p. 21 has laid down the following doctrine—

“En el delito de disparo ilegal de armas de fuego, es esencial para la acusación demostrar, de un modo positivo, que el disparo o los disparos iban dirigidos precisamente contra el supuesto ofendido, y no contra la casa del mismo. El testimonio del ofendido de que el ultimo disparo iba dirigido al lugar donde se hallaba el, no es suficiente prueba de que el tiro o los tiros fueron hechos contra su persona. La falta de prueba sobre que los tiros iban dirigidos precisamente contra el ofendido, es fatal para la acusación.” (El Pueblo *contra* Ambrosio Cupin, No. 2032, Gaceta Oficial de 11 de octubre de 1941.)

The acts, however, committed by the accused constituted undoubtedly a violation of the provisions of article 155 (1) of the Revised Penal Code for they were intended to cause alarm in the barrio where the shots were fired and a sure and positive danger to the persons in the house where they were aimed at especially under circumstances obtaining at the time. The circumstances of dwelling of the offended party was, therefore, present in the commission of this offense.

One of the errors assigned by the appellant is that the lower court acted as fiscal in assisting the latter in the examination of the witnesses with an evident desire to secure the conviction of the accused.

A perusal of the transcript of the stenographic notes taken during the trial shows that there had been unnecessary interference on the part of the trial judge in the presentation of the case, and in this connection we should

reproduce this Court's ruling in the case of *Abutan vs. Fernandez*, CA-G.R. No. 913-R, Aug. 30, 1947:

"With respect to the issue raised by counsel in the first assignment of error, in addition to the remarks appearing in the preceding paragraphs, this is not the first time that we have the opportunity to bring to the attention of a trial judge that the exercises of his right to question witnesses, with a view to satisfying his mind on any material point which may present itself during the trial of a case over which he presides, must be done sparingly, judiciously, in order to avoid any criticisms on the part of counsel (*People vs. Ferrer*, CA-G.R. No. 1155-R, decided July 28, 1947, citing *U. S. vs. Hudieres*, 27 Phil., 45; *U. S. vs. Lim Kui*, 35 Phil., 504; *U. S. vs. Binayao*, 35 Phil., 23; see also *Canons of Judicial Ethics* published in Vol. 42 No. 8 p. 1804 of the *Official Gazette*.)"

Again the *Canons of Judicial Ethics* adopted by the American Bar Association, published as Appendix T in Vol. III of *Comments on the Rules of Court* by Chief Justice Moran, page 714, 2nd Edition, provide—

15. INTERFERENCE IN CONDUCT OF TRIAL

"He may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part towards witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto."

Wherefore, the decision appealed from is hereby modified and the accused sentenced to thirty (30) days of *arresto menor* and to pay the costs.

Jugo and De la Rosa, JJ., concur.

Judgment modified.

[No. 2984-R. June 15, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
DAMASO VARELA, accused and appellant

CRIMINAL LAW; ELECTION; FALSIFICATION OF PUBLIC DOCUMENT; INCLUSION OF VOTER BY ERROR AND OVERSIGHT; LACK OF CRIMINAL INTENT.—The acts of the accused in advising the members of the board of the erroneous insertion of a voter's name in the lists of voters and of the necessity of cancelling the same and of writing letters to the Electoral Commission as well as to the circuit judge of his intention to do so are clear evidence of the absence of criminal intent in causing the registration of said voter in his precinct and prove that it was purely an error on his part as it was on the part of the other members of the board.

APPEAL from a judgment of the Court of First Instance of Bataan. Ocampo, J.

The facts are stated in the opinion of the court.

Joaquin L. Linao for appellant.

First Assistant Solicitor General Roberto A. Gianzon and *Solicitor Antonio A. Torres* for appellee.

RODAS, J.:

Damaso Varela who was tried, convicted and sentenced by the Court of First Instance of Bataan to an indeterminate penalty of from two (2) years, four (4) months and one (1) day of *prisión correccional* to eight (8) years and one (1) day of *prisión mayor* with the necessary penalties, and to pay a fine of two hundred pesos (P200), without preventive imprisonment in case of insolvency, and to pay the costs, for the crime of falsification of a public document, has appealed from said decision assigning five errors which may be discussed jointly.

It has been established that on October 4, 1947 the last day of voters' registration in connection with the general elections held on November 11 of said year, voter's affidavit, Exhibit A, was prepared purporting to be that of Eduardo Mesina which appears to have been sworn to and subscribed before the accused Damaso Varela, as chairman of the board of election inspectors of precinct No. 1 of the municipality of Moron, Bataan, by virtue of which said voter was registered as such in the electoral census of said precinct, when in truth and in fact the said Eduardo Mesina was not a voter of said precinct and had not applied for registration therein, he having been a bona fide resident of Manila since he began to vote, and was in said city on October 4, 1947 and did not go to Moron, Bataan, and hence the signature reading Eduardo Mesina and the thumbmark appearing in said voter's affidavit could not be his.

It has been admitted by the defense that the signature reading Damaso Varela is the genuine signature of the said accused Damaso Varela, as chairman of the board of election inspectors of said precinct No. 1 of Moron, Bataan, who admitted likewise, that on the above mentioned date, in his capacity as chairman of said board, he ordered one Isabelo Ontengco to prepare and fill a voter's affidavit to be used as a sample on that day for the voters who were applying for registration in said precinct in great number to facilitate the work, but does not know who thumbmarked it, and that said voter's affidavit, Exhibit A, happened to be mixed with other genuine voters' affidavits delivered to him by the other members of the board to be sworn to before him as chairman, and, in fact, it was signed by him as if the same had been sworn to and subscribed before him and then registered in the electoral census; that as soon as he noticed on October 6, 1947 the mistake thus committed and that Eduardo Mesina's name was registered erroneously, he summoned all the other election inspectors advising

them of the necessity of dropping said name from the electoral census of said precinct, and, in this connection, he wrote a letter to the Justice of Peace of Bagac, the one appointed circuit judge and to the Commission on Election, advising them of said error and praying for permission to cancel and drop, and, in fact on November 1, 1947 the name of said Eduardo Mesina was actually dropped and cancelled from the electoral census of said precinct No. 1 of Moron.

On the above-mentioned date the procedure followed in said precinct was that the voters' affidavits were accomplished by any of the members of the board of election inspectors, sworn to by the voters before the chairman of the board and then delivered to the poll clerk to enter them in the lists of voters which each of the inspectors must have. None of the inspectors including the poll clerk knew who prepared Exhibit A, except the chairman, the accused Damaso Varela who stated he ordered one Isabelo Ontengco to prepare it to be used as a sample, but did not know who signed and thumbmarked it and admitted that he signed it as if it had been sworn to before him, but that he must have signed it together with other voters' affidavits without noticing that the name of Eduardo Mesina was written therein. It is a fact that not only Damaso Varela knew Eduardo Mesina, but all the other members of the board of election inspectors, including the poll clerk, all of whom ought to have known that Eduardo did not appear at the election precinct No. 1 of Moron on October 4, 1947 for registration or for any other purpose. There is no evidence of conspiracy among the chairman and members of the board of inspectors and the poll clerk to falsify Exhibit A and register Eduardo Mesina as a voter of said precinct, so that it is but proper to conclude that the writing of his name in all the lists of voters in said precinct was due to an error and oversight on their part, and likewise Damaso Varela could have overlooked in signing a bunch of voters' affidavits, the fact that Eduardo Mesina did not appear before him for he did not even read the name of the voter appearing on Exhibit A.

It has been proven without contradiction that on October 6 or just two days after the insertion of Eduardo Mesina's name in the lists of voters, Damaso Varela, the herein accused, advised the members of the board of the erroneous insertion of Mesina's name in the lists of voters and of the necessity of cancelling the name, and wrote letters to the Electoral Commission as well as to the circuit judge of his intention to do so. This act on the part of the accused is a clear evidence of the absence of criminal intent in causing the registration of said voter in his precinct and proves his contention that it was

purely an error on his part as it was on the part of the other members of the board. Had he concealed it until after it was discovered by Angeles who had reported the matter to the Commission on Election the conclusion should be otherwise. This Court has looked in vain in the record of the case for the date on which the attention of the Electoral Commission had been called by Angeles to the alleged falsification. While Angeles stated that he posted himself all day on October 4 at precinct No. 1 to watch the acts of the accused and had noticed that Eduardo Mesina was registered fraudulently, yet he did not state when he took action against the accused and why he did not call the attention of said accused or of the other election inspectors right on that day.

Under the circumstances above set forth, the guilt of the accused has not been established beyond reasonable doubt and hence this Court, reversing the decision appealed from, hereby acquits the accused with costs *de officio*.

Jugo and De La Rosa, JJ., concur.

Judgment reversed; accused acquitted.

[No. 3149-R. June 15, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.*
EUSTAQUIO C. SIMBAJON, defendant and appellant¹

1. LEGAL TENDER; EMERGENCY CURRENCIES, VALID TENDER UNDER PRESIDENTIAL EXECUTIVE ORDER No. 25.—According to the provisions of Executive Order No. 25, issued by the President of the Philippines on Nov. 18, 1944, the "Victory Notes" and the Philippine coins identical to pre-war issue were considered as valid tender (par. 1); that *counterfeit emergency currencies* will not be redeemed (par. 4); and that Japanese currency, PNB Notes not duly authorized, Notes of the Bank of the Philippine Islands, New Central Bank Notes and *unauthorized emergency currencies* are not legal tender (par. 6). There being no showing that the emergency currencies in question (Mindanao Emergency Notes, the Montelibano Notes and the Military Script Notes) were either counterfeit or unauthorized, the contention of the accused that they were no longer valid tender at the time they were received by him, is not well taken. Moreover, the uncontradicted evidence of record shows that the emergency currencies delivered to the accused were at the time of their delivery recognized as legal tender by the people and provincial government of Misamis Occidental. Besides, there is no evidence that said province of Misamis Occidental was at the time a liberated area by the American forces from the Japanese army so as to be affected by the aforesaid Executive Order No. 25.
2. CRIMINAL LAW; MALVERSATION OF PUBLIC FUNDS; MONEY PROCEEDING FROM "FOOD AND SUPPLY ADMINISTRATION" HAVE THE NATURE OF PUBLIC FUNDS.—Under the facts and evidence

¹ See Resolution of the Supreme Court in G. R. No. L-3076 dated August 1, 1949. Petition for certiorari is dismissed, the questions raised being factual and unsubstantial.

in this case the Food and Supply Administration (FSA) was an organization created by order of the Civil Affairs Unit of the guerrilla government and financed by public funds of the provincial government of Misamis Occidental, it being the purpose of said organization to provide the people with foodstuffs to avoid profiteering; and that the amounts represented by Exhibits A and B, official receipts issued by the accused in the total sum of P13,000 were delivered to and received by the latter as reimbursement of funds provided by the provincial government of Misamis Occidental to the FSA, the accused having received said amounts in his capacity as assistant cashier and paymaster of the office of the provincial treasurer. Hence, there is no merit in the contention of the accused that the amounts represented by Exhibits A and B were not public funds for which he was accountable.

APPEAL from a judgment of the Court of First Instance of Misamis Occidental. Solidum, J.

The facts are stated in the opinion of the court.

Del Rosario & Del Rosario for appellant.

Solicitor General Felix Bautista Angelo and *Solicitor Jose P. Alejandro* for appellee.

GUTIERREZ DAVID, J.:

Eustaquio C. Simbajon brought this case on appeal to this Court seeking the reversal of the judgment of the Court of First Instance of Misamis Occidental finding him guilty of malversation of public funds and sentencing him to suffer an indeterminate penalty of from 9 years, 4 months and 1 day of *prisión mayor* to 13 years, 9 months and 11 days of *reclusión temporal*, with perpetual special disqualification and other accessory penalties of the law, and to pay the costs.

Appellant was the assistant cashier and paymaster in the Provincial Treasurer's Office of Misamis Occidental from July 1938 to May 7, 1945. As such, his duties were: to pay the laborers in the field for which purpose he was given cash advances by the cashier; to receive collections of motor vehicle fees; to assist the cashier in making minor payments; to receive payments made to the Government for which he issues official receipts; and to account and record all his transactions in the cash book.

During the guerrilla days and prior to the occupation of Misamis Occidental by the American Liberation Forces, an organization known as the Food Supply Administration (FSA) was created by the Civil Affairs Unit of the guerrilla government, Leon Gatmaitan being its administrator and Carlos Balauro its treasurer. Said organization was financed by the province of Misamis Occidental. Cash advances were given to it by the provincial treasurer of said province for its operation, which cash advances were to be refunded by said organization from time to time. On December 15, 1944, Carlos Balauro, in his capacity as

treasurer of the FSA, deposited with the appellant, as such assistant cashier and paymaster, the amount of ₱8,000, of which ₱800 were in Montelibano and Military Script Notes, as refund of the aforementioned cash advances given to the FSA. Appellant issued therefor official receipt No. 001059-AA (Exhibit A) in the name of Leon Gatmaitan, the FSA administrator. On January 17, 1945, Carlos Balauro made another refund by depositing with the appellant the amount of ₱5,000 in emergency notes (Mindanao Emergency Currency Board money), for which the latter issued official receipt No. 001060-AA in the name of said treasurer (Exhibit B).

Sometime before the month of May, 1945, the bookkeeper of the provincial treasurer's office of Misamis Occidental made inquiries from Carlos Balauro as to the unpaid balance of the FSA cash advances. Balauro informed said bookkeeper that he had already paid said cash advances, and to prove his assertion he produced on May 5, 1945, the official receipts, Exhibits A and B, issued by the appellant. Thereupon, the books and accounts of the appellant were examined and verified. Two investigations were conducted, one on May 6, 1945, by the Administrative Deputy of the Provincial Treasurer's Office of Misamis Occidental, and another on May 7, 1945, by the Chief Clerk of the Provincial Auditor's Office of Misamis Occidental. In each of said investigations appellant subscribed a sworn statement which now form part of the record as Exhibits C and I. In said investigations appellant admitted that he did not enter in his cash book the aforementioned deposits made by Carlos Balauro on December 15, 1944, and January 17, 1945, in the sums of ₱8,000 and ₱5,000, respectively, and that he had a shortage in his cash accountability in the amount of ₱13,158.14. Having failed to return the latter amount to the office of the provincial treasurer notwithstanding written demand to do so on May 6, 1945 (Exhibit D), he was separated from the service on May 7, 1945.

The foregoing facts were established by the evidence for the prosecution. Appellant did not adduce any evidence and submitted the case for decision on the strength of his motion for dismissal filed on April 17, 1948.

Under the first assignment of error it is contended that the Mindanao Emergency Notes, the Montelibano Notes and the Military Script Notes which were received but unaccounted for by the appellant were no longer valid tender at the time that those currencies were received by the same, pursuant to Executive Order No. 25 issued by the President of the Philippines on November 18, 1944.

According to the provisions of the aforesaid Executive Order, the "Victory Notes" and the Philippine coins identical to pre-war issue were considered as valid tender

(par. 1); that *counterfeit emergency currencies* will not be redeemed (par. 4); and that Japanese currency, PNB Notes not duly authorized, Notes of the Bank of the Philippine Islands, New Central Bank Notes and *unauthorized emergency currencies* are not legal tender (par. 6). There being no showing that the emergency currencies in question were either counterfeit or unauthorized, appellant's contention is not well taken. Moreover, the uncontradicted evidence of record shows that the emergency currencies delivered to the appellant were at the time of their delivery recognized as legal tender by the people and provincial government of Misamis Occidental. Besides, there is no evidence that said province of Misamis Occidental was at the time a liberated area by the American forces from the Japanese army so as to be affected by the aforesaid Executive Order No. 25.

According to the evidence adduced by the prosecution, the Food and Supply Administration (FSA) was an organization created by order of the Civil Affairs Unit of the guerrilla government and financed by public funds of the provincial government of Misamis Occidental, it being the purpose of said organization to provide the people with foodstuffs to avoid profiteering; and that the amounts represented by Exhibits A and B, official receipts issued by the appellant in the total sum of ₱13,000, were delivered to and received by the latter as reimbursement of funds provided by the provincial government of Misamis Occidental to the FSA, the appellant having received said amounts in his capacity as assistant cashier and paymaster of the Office of the Provincial Treasurer. Hence, there is no merit in appellant's contention under the second error assigned to the effect that the amounts represented by Exhibits A and B were not public funds for which he was accountable.

It is argued under the same assignment of error that the provincial government was not deprived of the amount of ₱13,000 represented by the aforesaid Exhibits A and B inasmuch as there was no actual transmission of cash from Carlos Balauro to the appellant but only paper transaction whereby Balauro did not actually receive from the Provincial Treasurer the amounts represented by Exhibits E to E-10 in the total amount of ₱5,326.49 and that the FSA was merely credited to that amount when the said exhibits were presented to the appellant. This contention is also untenable, because according to Carlos Balauro he delivered to the appellant the amounts of ₱8,000 and ₱5,000 in cash, for which the latter issued official receipts Exhibits A and B. He even testified that the ₱800 of the ₱8,000 were in Montelibano and Military Script Notes. Besides, the amount of ₱5,326.49 covered by Exhibits E to E-10 were actually received in cash

by Carlos Balauro from the Provincial Treasurer on December 15, 1944, as shown by Voucher No. 881 (Exhibit G), while Exhibit B, the official receipt covering the sum of ₱5,000, was issued by the herein appellant on January 17, 1945. Since Carlos Balauro categorically stated that he delivered the sum of ₱8,000 in cash on December 15, 1944, Exhibits E to E-10 could not have been included in the amount for which appellant issued the said receipt Exhibit A on December 15, 1944.

There is nothing to the claim that the information charges the appellant with the malversation of the sum of ₱13,158.14 whereas Exhibits A and B represent only ₱13,000, because it was shown that the difference, or the sum of ₱158.14, also represented cash which the appellant failed to account for.

Under the third assignment of error, appellant impugns the admissibility of Exhibit C, which is his sworn statement. It appearing that appellant voluntarily and freely executed said sworn statement and the same has been offered as evidence without any objection on the part of the defense, we see no merit in the contention of the appellant regarding its admissibility. The trial court was right in giving full weight and credence to said exhibit wherein appellant clearly admitted that there was a shortage of ₱13,158.14 in his accounts. With such admission and with the evidence of the prosecution to the effect that appellant had a shortage of ₱13,158.14, which he failed to account or return notwithstanding repeated demands therefor, it was incumbent upon said appellant under the law to show that he did not put the missing public funds to his personal use. This he failed to do.

In view of the foregoing reasons, we hold that the trial court committed none of the errors assigned and the judgment of conviction being in accordance with law and supported by the evidence of record, is hereby affirmed, with costs against the appellant.

Reyes and Borromeo, JJ., concur.

Judgment affirmed.

[No. 1885-R. June 16, 1949]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee,
vs. RAFAEL BOLOTANO, defendant and appellant

1. CRIMINAL LAW; COURTS; JUDGES; DUTY OF JUDGES TO ASCERTAIN VERACITY OF WITNESSES.—Judges are not passive arbiters charged exclusively with awarding a prize to the more skillful contestant. The trial Court has the duty, not merely the privilege, to satisfy himself of the veracity of the witnesses by all fair means at his disposal, and it is but natural that he should cross-examine the defense witnesses at greater length since their statements contradict those of the witnesses for the prosecution.

2. ID.; HOMICIDE; EVIDENCE; MITIGATING CIRCUMSTANCES; LACK OF INTENT TO CAUSE SO GRAVE A WRONG, DEMANDS POSITIVE PROOF OF INTENTION TO INFLICT A LESSER INJURY.—While the accused was properly accorded the benefit of a mitigating circumstance analogous to passion and obfuscation, that of lack of intent to cause so grave a wrong was erroneously appreciated by the trial court, because the latter circumstance demands positive proof of facts showing intention to inflict a lesser injury (Sup. Court of Spain Decision of March 22, 1922; Oct. 2, 1944).

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Arellano, J.

The facts are stated in the opinion of the court.

Perreño, Perreño, Flores & Carreon for appellant.

First Assistant Solicitor-General Roberto A. Gianzon and *Solicitor Luis R. Feria* for appellee.

REYES, J. B. L., J.:

The appellant Rafael Bolotano and his children Damaso and Narcisa Bolotano were accused of murder in the Court of First Instance of Occidental Negros for the killing of one Eduardo Doseo. The court, upon motion of the prosecution, dismissed the case against Narcisa; and after due trial, acquitted Damaso and found only appellant Rafael Bolotano to be guilty of the homicide, mitigated by passion and obfuscation and lack of intent to cause so grave a wrong. Appellant was accordingly sentenced to not less than 2 years, 4 months and 1 day of *prisión correccional* to 8 years and 1 day of *prisión mayor* with the corresponding accessory penalties, to indemnify the heirs of the deceased in the sum of ₱2,000 and to pay one half of the costs, Rafael Bolotano duly appealed.

From the evidence, the facts appear to be the following: the accused Rafael Bolotano and his children, Damaso and Narcisa, had denounced to the guerrilla authorities five persons (the deceased Eduardo Doseo, Candido Gali, Samson Gallardo, Leonardo Romo and Virgilio Rodriguez) as spies for the Japanese. The Bolotanos harbored the suspicion that the five had guided and accompanied the enemy soldiers who earlier in the month of September, 1944, had massacred seven members of their family. Upon the charge thus filed the five were held for investigation at the prison compound of the guerrilla headquarters of the 2nd Battalion, 72 FA, 7th MPD, at Trankalan, Barrio Mabini of the town of Escalante, Occidental Negros. In the morning of September 16, Lt. Baron, Battalion Adjutant, acting in the absence of the Intelligence Officer (S-2), Lt. Baltazar Legaspina, summoned Eduardo Doseo and Candido Gali for investigation. The two, with their hands tied at the back, were taken from the compound by privates Florentino Nicolas and Marciano Custodio, who was one of the guards. Doseo, Gali and Nicolas, in that order,

proceeded to headquarters, while Custodio remained a short distance behind to answer a call of nature. As the three were on their way, they saw appellant Rafael Bolotano and his children Damaso and Narcisa squatting on the left side of the road; and as Doseo passed Rafael, the latter stood up and hit Doseo in the occipital region with a "caña-espina" club one meter long, felling the defenseless man to the ground. Almost at the same time, Damaso Bolotano, with another club, attacked the fallen Doseo and struck him in the back, while Narcisa shouted "Better kill them all." The two Bolotanos then assaulted Candido Gali who retreated pleading that he be first investigated; but he was dropped unconscious by a blow in the temple. Further harm was prevented by soldiers Nicolas and Custodio, the latter having reached the scene during the attack on Gali. In the meantime Doseo had expired where he fell.

The battalion commander, Captain Ladislao Chavez, was awakened by the tumult; he appeared and inquired about the occurrence. Informed of what had transpired, he questioned the appellant and Damaso; both admitted responsibility and the captain directed Lt. Baron to take their sworn statement which the Bolotanos voluntarily executed. Pursuant to an standing arrangement with the civil authorities, the case was indorsed to them, though the Bolotanos were not placed under arrest. The Chief of Police of Sagay, Arsenio Arroyo, upon receipt of the papers, made an investigation and questioned Narcisa Bolotano (who informed him that the appellant was then sick of malaria). Candido Gali, who had been in the meantime conditionally released by Captain Chavez, was also questioned; and the Chief of Police filed a complaint for murder against the three Bolotanos with the Justice of the Peace of Sagay. Apparently the case was held up by the war operations, but it was revived in January of 1946.

Appellant's main attack on the version and credibility of the witnesses for the prosecution is based on the premise that the late Doseo was not killed by the Bolotanos but by the soldiers of Captain Chavez, and that the present case was engineered by the captain to dissuade the Bolotanos from accusing Gali, and his remaining companions, of treason. It is alleged by the defense that Chavez, in fact, improperly released Gali, Rodriguez, Gallardo and Romo from the guerrilla compound, in order to protect and save Romo, because the latter was related to the captain's wife. Unfortunately, on this point so essential to the appellant's theory, there is no competent or adequate evidence. The statement of former Lieutenant Legaspin, that Chavez asked him to release Romo and his companions from custody because Romo was a relative of Chavez' wife, is unworthy of credit, it being amply proved that at the time Chavez

was still unmarried; and besides, if Chavez had any such base motive, he would have kept it to himself, if only for his own protection. Chavez and Romo denied their supposed relationship and their denial has not been overcome. The attack on Doseo and Gali was seen and attested to by prosecution witnesses Gali, Custodio and Manlangit, and the last two had no improper motive to impute to appellant a crime not committed by him. While there is no expert evidence touching the cause of Doseo's death, it is logical to assume that it was due to the blow on the head inflicted by Rafael Bolotano, since Doseo died almost immediately afterwards and the blow was an adequate cause. Appellant has not established any intervening link in the chain of causation, although the burden was upon him (*U. S. vs. Abiog*, 37 Phil., 142).

The trial Court having resolved in favor of the credibility of the prosecution witnesses as against those of the defense, its resolution ought to stand in the absence of clear error. It is undeniable that the Bolotanos, smarting under memory of the heinous massacre that almost wiped out their entire family, by Japanese soldiers led (as they believed) by the deceased and his companions, had greater motive to attack the latter than the soldiers under Captain Chavez, who would be actuated only by a general hatred of spies. The probabilities are that the soldiers, if at all, would have maltreated Doseo and Gali upon their arrest and before they were confined, for the soldiers must have felt restrained by military discipline from attacking prisoners being taken for investigation to their superior officers who were close by. It is well to remark that even the Judge Advocate, Captain Apuhin, did not feel satisfied with the report of Lt. Legaspina that Doseo was murdered by the soldiers, and sent back the report for further investigation; and in addition the defense now blames for the death of Doseo two soldiers (Nicolas and Brion) who have been killed in action since then, being therefore, incapable of disproving the crime laid at their door. It can not be said that under the circumstances the trial Judge erred in his appreciation of the evidence.

The contradictions relied upon by the defense to overthrow the case for the prosecution are only apparent, as pointed out by the Solicitor General's brief. Specially with regard to the testimony of Manlangit, his statement (t. s. n., Abastillas, p. 23) that—

"Lo que hizo Nicolas cuando Damaso Bolotano golpeo y toco a Doseo en la nuca, Nicolas sujeto a Rafael y en eso Damaso tambien golpeo a Eduardo Doseo."

clearly indicates that the witness merely confused the names, and meant that Rafael hit Doseo first, and when seized by guard Nicolas, then Damaso likewise (tambien) struck the deceased. The error is clearly apparent from

the last phrase of the statement quoted (*tambien and not otra vez*), particularly when it is taken into account that this same witness had clearly narrated (at p. 21) that

"Al venir los dos presos del compound y al pasar cerca al sitio donde estaban los dos acusados, de repente se levanto Rafael Bolotano y le pego a Eduardo Doseo, y despues siguio Damaso y tambien golpeo."

All of which corroborates the testimony of Candido Gali. It is an elementary rule of proof that not every contradiction imports perjury, specially where the alleged inconsistency admits of an obvious explanation.

The fact that Candido Gali's face after the incident was swollen to the extent that Captain Chavez did not at first recognize him, is no proof against the murderous assault of the Bolotanos. There is no account of the number of blows inflicted by them upon Candido Gali, and even admitting that the soldiers had also maltreated him, such fact would not necessarily negative the killing of Doseo by the appellant.

The failure of Captain Chavez to place the Bolotanos under arrest immediately after the aggression, does not disprove the criminal responsibility of this appellant, which is satisfactorily established by eyewitnesses. As we view the case, the captain was apparently over cautious in not giving offense to the civilian authorities. But his negligence, if any, in this regard is entirely foreign to the issue. The same can be said as to his release of Romo and his companions, who were civilians and not subject to military law under article 2 of the Articles of War (Commonwealth Act No. 408). On the other hand, that Gali, Romo and companions were kept under protective custody for one month after the killing, confirms the existence of the attack by the Bolotanos, albeit indirectly.

The appellant complains that the trial judge behaved as a prosecutor toward the defense witnesses. We have gone carefully over the record and find nothing to substantiate the charge. Counsel should realize that judges are not passive arbiters charged exclusively with awarding a prize to the more skillful contestant. The trial court has the duty, not merely the privilege, to satisfy himself of the veracity of the witnesses by all fair means at his disposal, and it is but natural that he should cross examine the defense witnesses at greater length since their statements contradict those of the witnesses for the prosecution. It is astounding that counsel who invokes for the accused the presumption of innocence should be the first to deny it to the trial Judge. The cynical advice that "when the case is good, counsel should pound on the evidence; but when the case is weak, pound on the judge" has nothing to commend it.

While we entertain no reasonable doubt of the appellant's guilt, we do not agree with the Solicitor General's view that the case is one of murder, qualified by treachery. It is true that Doseo was attacked while his hands were tied, and therefore, with comparative impunity for the appellant; but the record is clear that this circumstance did not enter appellant's mind at the time. He was driven by a blind desire to avenge the wrong done to his sons and family, and the resentment that suddenly flared up at the sight of the persons whom he firmly believed to be responsible made appellant disregard all thought of his own safety, as is proved by his disregard of the presence of the armed guards. But we do agree with the Government's stand that while the accused was properly accorded the benefit of a mitigating circumstance analogous to passion and obfuscation, that of lack of intent to cause so grave a wrong was erroneously appreciated by the trial court, because the latter circumstance demands positive proof of facts showing intention to inflict a lesser injury (Sup. Court of Spain Decision of March 22, 1922; Oct. 2, 1944) and appellant's attack was stopped only by the intervention of the guards, Nicolas and Custodio, who succeeded in saving Candido Gali from the sad fate of Doseo.

The appellant is therefore guilty of homicide, with one mitigating circumstance. Applying the Indeterminite Sentence Law he is sentenced to not less than six years and one day of *prisión mayor* and not more than twelve years and one day of *reclusión temporal*. Thus modified, the judgment appealed from is affirmed in all other respects, with costs against appellant in this instance.

Gutierrez David and Borromeo, JJ., concur.

Judgment modified.

[No. 2224-R. June 16, 1949]

I. GUSTAVUS BOUGH and CARMEN ANOPOL, plaintiffs and appellees, *vs.* BRUNO MODESTO, RESTITUTO ANOPOL and SERGIO ANOPOL, defendants and appellants.

1. INHERITANCE; RIGHTS BY INHERITANCE, WHEN ACQUIRED AND TRANSMITTED.—It is well settled that rights by inheritance are acquired and transmitted upon the death of the *causante*. If this is so then it must necessarily follow that it is perfectly legal for an heir—after the death of his *causante*—to enter into a contract of the nature of the document Exhibit B, the understanding to be, of course, that the contract would be effective only if and when he is really declared an heir and only as regards any property or properties that might be adjudicated to him as such. It cannot be said that the disputed contract deals and interferes with properties in *custodia legis* because it contemplates and provides for the partition only of such property or properties as may be adjudicated to the prospective heir if and when he is declared to be an heir of his deceased

wife, the claim for the partition to be made in due course, that is, through the probate court. In the last analysis, therefore, the present action should not be considered strictly as one for partition but only as an action intended to determine the rights of the parties under the terms of the contract Exhibit B.

2. **CONTRACTS; PRESUMPTION AS TO THEIR VALIDITY AND AS TO ELEMENT OF LAWFUL CONSIDERATION.**—Contracts are presumed to be valid and to be supported by lawful and good consideration. This presumption has not been successfully overthrown in the case at bar. On the other hand, even assuming that the claim of the parties aforementioned that they were also intestate heirs of the deceased had no foundation in law, it can not be disputed that if they agreed to withdraw their claim as such or to accept a limitation upon the rights they claimed, in exchange for what was promised them, their agreement is perfectly valid and binding.

APPEAL from a judgment of the Court of First Instance of Leyte. Hernandez, J.

The facts are stated in the opinion of the court.

Santiago Tonolete for appellants.

Julio Siayngco for appellees.

DIZON, J.:

On March 4, 1936 Bruno Modesto, I. Gustavus Bough, as representative of the heirs of his deceased wife, Basilia Anopol, Restituto Anopol and Carmen Anopol executed the private document now in the record as Exhibit B which reads as follows:

“SEPAN TODOS QUE LAS PRESENTE VIERON

“Que nosotros Bruno Modesto, esposo de la defunta Dña. Matilde Cantiveros y de Tanauan, Leyte, Restituto Anopol, I. Gustavus Bough representante de los herederos de la defunta Basilia Anopol, todos de Carigara, Leyte, y Carmen Anopol de Tacloban, Leyte, por la presente irrevocablemente hacemos constar que en la repartición de los bienes de la defunta Dña Matilde Cantiveros hecho por el Sr. Bruno Modesto en el sentido que una tercera parte quede con el; y una tercera parte sea dividido entre los arriba mencionados Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol; y que una tercera parte sea usado para pagar los gastos ocasionados en la litigación motivado por un alegado testamento presentado por el Abogado Salazar en la Corte de la Primera Instancia de Tacloban, Leyte; y con esto repartición estamos conformes.

“Este tercera parte se entiende es para pagar los gastos solamente que ocasionara en la litigación de la una tercera parte perteneciente y que corresponde a Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol; y como nadie de los herederos dispone suficiente fondos para sufragar los gastos que necesariamente va ocurrir, y para pagar dicho gastos; nosotros todos los herederos hemos suplicado, ofrecido y entregado bajo este escritura al Dr. I. Gustavus Bough de Carigara, Leyte, la una tercera parte de todos los bienes de la defunta Dña. Matilde Cantiveros en consideración y en compensación para los gastos de este litigación que el Dr. Bough ha comprometido de pagar en favor de los arriba mencionados Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol.

“Se entiende además que la parte que será entregada al mencionado Dr. I. Gustavus Bough, en compensación de sus gastos será una

tercera parte de todos los bienes de la defuncta Dña. Matilde Cantiveros, sin reserva de cualquiera naturaleza; caso que el asunto se decide el Juzgado en favor del solicitante del abeintestado Sr. Bruno Modesto; y que este tercera parte será entregado al arriba dicho Dr. I. Gustavus Bough inmediatamente después de haber dictado sentencia favorable las cortes competentes.

"En virtud de lo que antecede y en testimonio de lo cual firmamos en Carigara, Leyte, Islas Filipinas hoy 4 de Marzo de 1936."

The present action was instituted by I. Gustavus Bough and Carmen Anopol mainly to secure judgment ordering Bruno Modesto to divide the properties left by the latter's deceased wife, Matilde Cantiveros, in the manner and form provided in the private document copied above. Defendants denied specifically the material allegations of the complaint and by way of special defense alleged (a) that the plaintiffs had failed to comply with the terms and conditions specified in the contract Exhibit B and (b) that the aforesaid contract was contrary to law, morals and public policy.

During the period for trial, upon proper motion, the heirs of the deceased Ruperto Kapunan were allowed to intervene having shown that on March 29, 1941 they had caused a notice of attorney's lien to be entered in the intestate proceedings for the settlement of the estate of the deceased Matilde Cantiveros in connection with the payment of professional fees due to their deceased father. The intervenors then filed a motion to dismiss which the trial court denied on April 26, 1944.

After the trial the lower court rendered the appealed judgment whose dispositive part reads as follows:

"Por tanto, declaramos y ordenamos: (a) que la demandante Tarcela R. Vda. de Bough en su capacidad de administradora del finado Dr. I. Gustavus Bough pague los honorarios del finado abogado Don Ruperto Kapunan que se determinarán en el expediente 2515; y (b) que una vez pagados dichos honorarios y al tiempo de hacerse la adjudicación de los bienes relictos de la finada Matilde Cantiveros al demandado Bruno Modesto, la demandante Tarcela R. Viuda de Bough deberá presentar una copia de esta decisión en la causa No. 2515 del Juzgado de Leyte para que una parte de dichos bienes se adjudique y se entregue a la aquí demandante en su capacidad ya indicada. Sin costas." (Record on Appeal, pp. 92-93.)

Both parties appealed.

Plaintiffs, as appellants, contend that the trial court committed the following errors:

I

"El Juzgado inferior incurrió en error al declarar en su decisión que bajo las palabras "gastos en una litigación" (gastos en un litigio) que se encuentran en el Exhibito B de los demandantes se deben incluir necesariamente los gastos ordinarios como son los derechos de escribanía, gastos de testigos y honorarios de los abogados, y como consecuencia de ello, ordenar a la demandante Tarcela R. Vda. de Bough el pago de los honorarios del abogado Don Ruperto Kapunan, previo a la recepción de la tercera parte de los bienes de Dña. Matilde Cantiveros.

II

"El juzgado inferior igualmente cometió error al declarar en su decisión que la demandante Carmen Anopol y los referidos de I. Gustavus Bough con su primera mujer, así como los demandados Restituto Anopol y Sergio Anopol no tienen derecho a reclamar del demandado Bruno Modesto parte de los bienes que se adjudicaren a éste en el referido expediente 2515."

On their part, the defendants, as appellants, claim that the trial court committed the following errors:

I

"The court *a quo* erred in holding that the contract Exhibit B is valid and enforceable against the defendant-appellant, Bruno Modesto.

II

"The court *a quo* erred in ordering the plaintiff-appellee, Tarcela R. Vda. de Bough, in her capacity as administratrix of the late I. Gustavus Bough, to pay the fees for the professional services of the late Don Ruperto Kapunan.

III

"The court *a quo* erred in declaring and ordering that one third of the state of the late Matilde Cantiveros be adjudicated and delivered to plaintiff-appellee Tarcela R. Vda. de Bough in her capacity as administratrix of the late I. Gustavus Bough."

It appears that Matilde Cantiveros, wife of Bruno Modesto, died on July 12, 1935. On October 12 of the same year Modesto filed the corresponding petition in the Court of First Instance of Leyte (special proceedings No. 2515) for the issuance of letters of administration in his favor, praying further that, after the proceedings provided by law, he be declared the only heir of his deceased wife. On December 19 of the same year, however, Zosima de la Cruz presented in said proceedings a document alleged to be the last will and testament of Matilde Cantiveros asking that the same be admitted to probate. Modesto filed an opposition to said petition and after a somewhat extended litigation the aforesaid document was disallowed by the Court of First Instance of Leyte on November 9, 1937, said decision having been affirmed by this Court on appeal on February 29, 1940.

The decisive issues arising from the different assignments of error made by the parties may be stated as follows:

1. Is the contract Exhibit B valid?
2. Did the plaintiffs comply with their obligation under the aforesaid contract?
3. Did the lower court err in holding that, as far as Carmen Anopol, Restituto Anopol, Sergio Anopol and the children of I. Gustavus Bough with his first wife, Basilia Anopol, are concerned, the contract Exhibit B was without consideration and that, therefore, said parties had no right to enforce the same?
4. Should the plaintiffs be ordered to pay to the heirs of the deceased Ruperto Kapunan the attorney's fees due to him?

We are of the opinion that the contract Exhibit B is valid, the same not being contrary to law, morals or public policy. The same does not undertake to partition among the parties any particular property or properties. It is a mere agreement, executory by nature, whereby Bruno Modesto agreed to share with the other contracting parties whatever property he might inherit from his deceased wife. It is for this reason that the proportion into which the said property or properties were to be divided was apportioned in general terms, $\frac{1}{3}$ for Modesto, $\frac{1}{3}$ for Restituto Anopol, Sergio Anopol, Carmen Anopol and I. Gustavus Bough, as representative of his children had with Basilia Anopol, and the remaining $\frac{1}{3}$ for I. Gustavus Bough himself provided he advanced or paid the expenses to be incurred in connection with the litigation that Modesto was then facing, namely, the probate of the alleged will of the deceased Matilde Cantiveros.

It is well settled that rights by inheritance are acquired and transmitted upon the death of the *causante*. If this is so then it must necessarily follow that it is perfectly legal for an heir—after the death of his *causante*—to enter into a contract of the nature of the document Exhibit B, the understanding to be, of course, that the contract would be effective only if and when he is really declared an heir and only as regards any property or properties that might be adjudicated to him as such. It cannot be said that the disputed contract deals and interferes with properties in *custodia legis* because, as we have just stated, the reasonable interpretation that must be given to it is that it contemplates and provides for the partition only of such property or properties as may be adjudicated to Bruno Modesto if and when he is declared to be an heir of his deceased wife, the claim for the partition to be made in due course, that is, through the probate court. In the last analysis, therefore, the present action should not be considered strictly as one for partition but only as an action intended to determine the rights of the parties under the terms of the contract Exhibit B.

With respect to the right of Restituto Anopol, Sergio Anopol, Carmen Anopol and the heirs of the deceased Basilia Anopol, represented by I. Gustavus Bough, to enforce the provisions of the contract in question against Bruno Modesto, the trial court made the following considerations:

“En la parte petitoria de la demanda se pide que los bienes dejados por la finada Matilde Cantiveros se dividan en tres partes iguales, a saber: una parte para el demandado Bruno Modesto y una parte para los hijos de I. Gustavus Bough habidos con Basilia Anopol, llamados Valdemar, Hector y Elizabeth; Sergio Anopol y Restituto Anopol y la tercera parte a I. Gustavus Bough. Como ya hemos indicado varias veces, I. Gustavus Bough pretende arrancar sus derechos sobre la tercera parte por los gastos que ha hecho en el litigio contra la legalización de un alegado testamento de Matilde Cantiveros.”

veros. Es curioso notar que entre las personas mencionadas como participantes de una tercera parte solamente Carmen Anopol aparece como demandante y los otros, Restituto Anopol y Sergio Anopol aparecen como demandados. Éstos así como Carmen Anopol y los hijos de I. Gustavus Bough no pretenden ser herederos de la finada puesto que en la declaración de herederos en el expediente 2515, como queda indicado, el Juzgado declaró a Bruno Modesto como único heredero, de modo que los demandantes pretenden que se adjudique un tercio de los bienes a las personas (Carmen Anopol y los hijos de Bough) ya mencionadas por el mero hecho de haberse firmado por el demandado Bruno Modesto el exhibito "B". Carmen Anopol que declaró en esta causa se limitó a decir que el demandado Bruno Modesto le había dicho que el abogado Kapunan necesitaba un experto calígrafo para el éxito de la causa y como entonces el demandado no disponía de dinero, pidió la ayuda de ella pero como ella contestara que tampoco tenía dinero para tales gastos, indicó al demandado que se viera con el Dr. I. Gustavus Bough porque éste posiblemente tendría medios para ayudar al demandado y, en efecto, ella y el demandado fueron a la casa del Dr. Bough y más tarde se firmó el Exhibit B. De su mismo testimonio se desprende que no existe consideración alguna para que el demandado Bruno Modesto traspasara a la demandante Carmen Anopol y otros ya mencionados una tercera parte de los bienes. El documento (Exhibito B, demandante) que tantas veces hemos citado está pobremente redactado y bastante confuso en sus términos. En una parte del mismo se dice que una tercera parte de los bienes se reserva para "los gastos solamente que ocasionara la litigación de la tercera parte perteneciente que corresponde a Restituto Anopol, I. Gustavus Bough, Sergio Anopol y Carmen Anopol." Este párrafo da la impresión de que estas personas reclamaban en el expediente especial 2515 parte de los bienes pero no puede ser así porque no son sobrinos, hijos de hermanos y el único que tenía capacidad legal para oponerse a la legalización del testamento es el aquí demandado Bruno Modesto, que es viudo, como ya hemos dicho, de la finada Matilde Cantiveros. Por estas consideraciones, entendemos que Carmen Anopol y los referidos hijos de I. Gustavus Bough con su primera mujer, así como los demandados Restituto Anopol y Sergio Anopol no tienen derecho a reclamar del demandado Bruno Modesto parte de los bienes que se adjudicare a éste en el referido expediente 2515."

We cannot agree with the conclusion arrived at by the trial court to the effect that, as far as the aforesaid parties are concerned, the contract Exhibit B is entirely without consideration and therefore void. On one hand, contracts are presumed to be valid and to be supported by lawful and good consideration. This presumption has not been successfully overthrown in the case at bar. On the other hand, even assuming that the claim of the parties aforementioned that they were also intestate heirs of the deceased Matilde Cantiveros had no foundation in law, it can not be disputed that if they agreed to withdraw their claim as such or to accept a limitation upon the rights they claimed, in exchange for what Bruno Modesto promised them, their agreement is perfectly valid and binding. Moreover, it must be borne in mind that at the time of the execution of Exhibit B Bruno Modesto was engaged in a bitter litigation against Zosima de la Cruz. Had the latter succeeded in having the alleged will of Matilde Cantiveros

probated, the former would have lost almost everything because the will instuted Zosima de la Cruz and the children of Pomposo Burgueta and Constancia Anopol as the only heirs of the testatrix. It is not strange, therefore, that Bruno Modesto and the other parties to the contract Exhibit B should have banded together to resist the attempt of Zosima de la Cruz to have the aforesaid will probated. Therefore, although it does not appear that Carmen Anopol and the others had paid any consideration in cash in connection with the execution of the private document Exhibit B, we are of the opinion that whatever help they might have given Modesto and Bough in the course of the hearing of the probate of the alleged will of Matilde Cantiveros constitutes sufficient consideration in law.

Upon the second question we agree with the trial court that the phrase "gastos de esta litigación", "gastos solamente que ocasionara en la litigación" refer to the expenses to be incurred in connection with the settlement of the estate of the deceased Matilde Cantiveros, more particularly to those that would be necessary to resist the attempt of Zosima de la Cruz to have the aforesaid will of Matilde Cantiveros admitted to probate, said expenses consisting mainly of court fees, necessary expenses of witnesses, printing of records, record on appeal and briefs and attorney's fees. The contention of the plaintiffs that the expenses they had in mind were only the fees to be paid to the handwriting expert who was to testify at the hearing of the probate of the will is clearly untenable. Had that been the case, it would have been the easiest thing for the parties to say so definitely and without equivocation in the contract. We are satisfied that the general context of the document in question gives readily the unmistakable impression that Mr. Bough had agreed to advance all the necessary expenses incident to the settlement of the estate of Matilde Cantiveros for and in consideration of $\frac{1}{3}$ of the net estate of said deceased—which was quite considerable.

The only remaining question is whether or not the administratrix of the intestate estate of I. Gustavus Bough should pay the attorney's fees due to attorney Ruperto Kapunan, now deceased, to the heirs of the latter. We believe that the appealed judgment, insofar as it orders said payment to be made cannot be sustained because the attorney's fees of Don Ruperto Kapunan had been not only determined but paid. In fact, the appealed judgment itself states that in special proceedings No. 2515 the heirs of the deceased attorney Kapunan filed a motion asking for the payment of the fees due to him and that pursuant thereto the lower court, on May 20, 1944, ordered (Exhibit 2-A) the administrator Bruno Modesto to pay the heirs of Don Ruperto Kapunan the sum of ₱4,250. This amount was actually

paid to and received by attorney Lastrilla, in his capacity as counsel for said heirs, on June 12, 1944 (Exhibit 3-A).

Upon these facts, it seems obvious that while I. Gustavus Bough or his estate must pay the fees of the attorney who represented Modesto in special proceedings No. 2515, that payment must now be made to the administrator of the estate of the deceased Matilde Cantiveros who had previously paid them to the heirs of attorney Kapunan.

In view of all the foregoing, the appealed judgment is, therefore, modified as follows:

1. The contract Exhibit B is declared valid and binding upon all the parties thereto, with the understanding that the same shall be effective and enforceable only upon the net estate of the deceased Matilde Cantiveros adjudicated to her only intestate heir, Bruno Modesto. For the purpose of making said contract effective, a copy of this judgment shall be served upon the administrator of the estate of said deceased Matilde Cantiveros and another copy should be filed in the record of special proceedings No. 2515, where the interested parties may ask for the corresponding order of delivery of their respective shares;

2. The plaintiff, Tarcela R. Vda. de Bough, in her capacity as administratrix of the intestate estate of the deceased I. Gustavus Bough, is hereby ordered to pay the sum of ₱4,250 to the administrator of the intestate estate of the deceased Matilde Cantiveros as reimbursement of an equal amount paid by the latter to the heirs of the deceased Ruperto Kapunan. Thus modified, the appealed judgment is affirmed in all other respects, with costs.

Concepcion and De Leon, JJ., concur.

Judgment modified.

[No. 2290-R. June 16, 1949]

JOSEFA RIVERA, plaintiff and appellant, *vs.* PABLO RIVERA, ELIAS RIVERA, SANTIAGO RIVERA, ROSALINDA RIVERA and CESAREA REYES, defendants and appellees.

1. FISHERY LAW; GRANT OF FISHERY RIGHTS NOT PERPETUAL.—According to the Constitution, the grant of fishery rights cannot be perpetual or indefinite. And Sec. 69 of Act 4003 (The Fisheries Act), as amended by Commonwealth Act No. 471, further limited the duration of concessions to not more than five years.
2. WILLS; WILL INOPERATIVE UNLESS PROBATED.—A man may execute a will and still die intestate, for the will is not operative unless duly probated.
3. HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; DOUBT AS TO NATURE OF PROPERTY OF SPOUSES TO BE RESOLVED IN FAVOR OF CONJUGAL PARTNERSHIP.—All doubts and uncertainty as to the nature of the properties of spouses are to be resolved in favor of the conjugal partnership, specially in the instant case where only one of the five children of the deceased husband holds to the theory that the property in question was not ganancial in nature.

APPEAL from a judgment of the Court of First Instance of Bulacan. Pecson, J.

The facts are stated in the opinion of the court.

Arturo Agustines for appellant.

David & Guevara for appellees.

REYES, J. B. L., J.:

Plaintiff appellant brought this action in October 24, 1946 against defendants appellees for an accounting of profits and judicial partition of the properties left by her father Aquilino Rivera, who died intestate in August 10, 1935, survived by five children Josefa (the plaintiff), Pablo, Elias, Santiago and Rosalinda, surnamed Rivera, and a widow by a second marriage, Cesarea Reyes. According to plaintiff appellant, her father owned and possessed the following properties:

"In Binuangan, Obando, Bulacan—

"(a) Two residential lots, covered by tax declaration Nos. 161 and 2246;

"(b) Rights to plant oysters on five oyster culture beds, granted to him by the municipal government of Obando, Bulacan;

"(c) 200 plates;

"(d) 3 bancas;

"(e) One house of mixed materials, created on the lot covered by tax declaration No. 2246;

"In Bulacan, Bulacan—

"(f) Rights to plant oysters on four oyster culture beds, granted to him the municipal government of Bulacan, Bulacan; and

"(g) One fish corral (baklad) in Bulacan River."
(Pages 1-2, Appellant's brief.)

Plaintiff further alleged that, with the exception of the lot covered by tax declaration No. 161, which was donated to plaintiff when she married, all the other properties were in the possession of defendants since Aquilino Rivera's death, and had never been partitioned, nor was their income shared with her.

The contention of defendants is that their father had executed a will distributing his properties among his children and widow; that shortly after his death, his heirs decided not to probate the will in order to avoid expense, and partitioned the properties extrajudicially among themselves. It was further pleaded for the defendants that the deceased Aquilino Rivera was a mere licensee of the oyster beds in Obando and Bulacan, and his rights thereto expired upon his death; and that plaintiff's action had prescribed.

The parties agreed on the identity of the properties listed in the complaint (t. s. n., pp. 9-10). It is also uncontroverted that the 200 plates (item c) and the house (item e) had been destroyed upon liberation of the town from the Japanese domination; that the three bancas (item d) were

common property of plaintiff and defendants; and that the fish corral in the Bulacan River (item *g*) had been sold in July 1945 by defendants Elias and Santiago Rivera to one Romulo de la Rosa for ₱3,200 (Exhibit 1). This practically reduced the controversy to the rights to the oyster culture beds in Obando and Bulacan.

Plaintiff appellant, testifying in her own behalf, asserted that the defendants had been cultivating the oyster beds since the death of her father who was the original grantee, and had not given her any part of the profits despite her insistent demands. Defendants Elias, Santiago and Pablo Rivera, in turn, asserted that upon the death of Aquilino Rivera, his heirs partitioned his properties extrajudicially in accordance with his will (Exhibit 2) which was not probated to save expense; that by said partition Josefa Rivera was allotted the residential lot covered by tax receipt No. 161 and the possession of one and one-half ($1\frac{1}{2}$) oyster beds in Baluarte, Bulacan, of which the one-half bed was later sold for ₱150 by plaintiff to her brother Pablo, who in turn resold it to Santiago Ramos. It was also proved that the license fee for the oyster beds now occupied by the defendants in Obando and Bulacan had been paid by them in their own names after the death of their father, and that defendants had secured licenses in their own names from the Municipal authorities. (Exhibits 3, 4, 6 to 11-*a*.)

On rebuttal, plaintiff and her husband denied having received any of the oyster beds held by her father in his lifetime and asserted that the bed cultivated by them in Bulacan, Bulacan, was her husband's private concession.

The case being submitted for decision, the trial Court adjudged that the municipal grants to exploit the oyster beds formerly held by the late Aquilino Rivera were not transmissible to his heirs after his death; that the fish corral and three boats, (items *d* and *g*) being unliquidated conjugal property of the deceased and his second wife, Cesarea Reyes, the plaintiff was entitled to $\frac{1}{10}$ (one-fifth of the husband's half) of the proceeds of their sale that the parcels of land covered by tax declarations Nos. 161 and 2246 were common property of the five children of Aquilino Rivera, and therefore the Court adjudicated to the plaintiff one-fifth ($\frac{1}{5}$) thereof.

Plaintiff duly appealed from the decision, and in this court assigns four errors as follows:

"I. The trial court erred in holding that the late Aquilino Rivera was a mere licensee of—not a grantee of proprietary interests in—the nine oyster culture beds granted to him by the municipalities of Obando and Bulacan.

"II. The trial court erred in not holding that the rights of Aquilino Rivera on the nine oyster culture beds descended to his heirs at law upon his death and in not granting the partition of same.

"III. The trial court erred in not ordering the appellees Pablo, Elias, Santiago, and Rosalinda Rivera to render an accounting of the

fruits of the nine oyster culture beds, and ordering them to pay one-fifth ($\frac{1}{5}$) thereof to the appellant.

"IV. The trial court erred in holding that the fish corral in the Bulacan River and the three bancas are conjugal properties of Aquilino Rivera and the appellee Cesarea Reyes, and assigning to the appellant only one-fifth ($\frac{1}{5}$) of one half ($\frac{1}{2}$) of the proceeds of the sale of said properties."

It will be seen that the resolution of first three assignments of error depends upon the exact nature of the interest held by the late Aquilino Rivera in the oyster beds in question, under the municipal ordinances on the matter. Plaintiff-appellant vigorously asserts that the exclusive right to operate such beds in the municipal waters is private property, and not a mere license as held by the lower court, and therefore, such rights passed to the heirs of the grantee as part of his estate. Appellant devotes a considerable portion of his brief to a differentiation of licenses and leasehold rights; but as we view the case, such discussion is beside the point. The key to the entire question is the duration of the concession held by Aquilino Rivera, and on this exact issue there is a total failure of proof. The ordinance under which the grant was made by the municipal authorities is not in evidence, and no copy of it could be found. The testimony of Simeon Mendoza, who was the municipal secretary when the ordinance was adopted, is merely to the effect that (a) the ordinance was adopted to avoid disputes, (b) that oyster beds were divided into three classes, (c) that applications were submitted to and granted by the municipal President, after inquiry and in the absence of conflicting claims, and (d) that if the licensee could not pay two years municipal license, the privilege could be granted to others. From this data, the duration of the grant to the late Aquilino Rivera can not be inferred.

In view of the Constitutional limitations involved it can be assumed that the grant of fishery rights could not have been perpetual or indefinite. Furthermore, section 69 of Act 4003 (The Fisheries Act), as amended by Commonwealth Act No. 471, further limited the duration of the concessions to not more than five years.

"SEC. 69. When the privilege to * * * construct or operate fishponds, or oyster culture beds, * * * is granted to a private party as herein above authorized, the same shall be let to the highest bidder for a period not exceeding five years or upon previous approval of the provincial board, for a period not exceeding ten years * * *."

There is no proof that the lost ordinance was ever approved by the provincial board. Privileges granted under it could not, therefore, exceed five years, but could be awarded for a shorter period; and it does not necessarily follow that the municipal authorities granted the rights for the maximum limit. To make matters worse, there is no evidence whatever of the date when Aquilino Rivera ob-

tained his concessions. In the absence of such data, it would be sheer speculation to hold that the privileges held by the deceased did not lapse at his death.

The burden of establishing the unexpired portion if any, of Aquilino Rivera's ostriculture privileges on the day of his death lay upon the appellant, since it is she who contends that the defendants merely succeeded and continued in the enjoyment of the rights granted to the deceased by the municipal authorities. Not only has she failed to meet the burden, but the fact that the authorities subsequently issued new licenses to the defendants in their individual capacity indicates that the municipality considered the rights of Aquilino as having ended on or about the time of his demise. Consequently, plaintiff-appellant can not, as correctly decided by the Court below, assert any right to participate in the profits obtained by the defendants after the death of their common parent.

A second reason for disallowing the claim of appellant with regard to the operation of the oyster beds now held by the defendants appellees is the preponderance of the evidence that the estate was partitioned among the heirs, at least that part consisting of the oyster bed privileges. Had it not been so partitioned and had appellant not received her share there would be no explanation for her failure to bring this action earlier. According to her own testimony, defendants have continuously and consistently refused to give her any share of the operational profits since 1935; yet she did not take any action to assert and enforce her rights until ten years had elapsed. No conclusion can be justly drawn from such long years of inaction other than appellants conviction that her pretensions were unfounded. This finding is reinforced by the circumstance that the appellant sold her rights to one half oyster bed to her brother Pablo Rivera, for the price of ₱150—, she having fixed the value of the exploitation privileges at ₱300—for a whole bed. The explicit testimony of Pablo Rivera in this matter stands uncontradicted by the appellant or her husband. It is unnecessary to stress that the sale by her presupposes that the share sold was allotted to her in some kind of partition.

Appellant offered no excuse for her procrastination, and counsel's belated attempt to explain that the delay was due to the minority of some of the defendants, and appellant's effection for them, is entirely inadequate. The minority of the defendants could not bar action; and appellant's affection not being reciprocated by her brothers, who refused to share their profits with appellant, we can not see what could hinder appellant in demanding what she asserts to be no more than what was legitimately hers.

We are unconvinced by the arguments of appellant against the genuineness of the alleged will of Aquilino Ri-

vera; at any rate, that question is not important, since appellees do not derive their rights from the will, which was not probated and could not convey any title to property but from the partition agreement. Neither do we set any stock in the technical argument that appellees' admission in their answer that their father died intestate bars them from alleging that the partition was made in accordance with his testament. As pointed out for the appellees, a man may have executed a will and still die intestate, for the will is not operative unless duly probated.

To support her fourth assignment of error, plaintiff appellant relies upon the fact that defendants appellees expressly admitted the allegation in the complaint that the deceased Aquilino Rivera "owned and possessed" the three bancas and fish corral in the Bulacan River, items (d) and (g). Considering that the allegation in question is one which is more of a conclusion of law than of fact; that the admitted averment does not specify that the deceased owned and possessed *exclusively* the properties involved, or that they were his private capital; and considering finally that the presumption established by Article 1407 of the Civil Code is one so fundamental that it requires clear and convincing proof of the source of the property in order to overcome the statutory presumption, the lower court can not be declared in error in applying to the bancas and fish corral the rule of article 1407, and in adjudging the rights of appellant accordingly. All doubts and uncertainty are to be resolved in favor of the conjugal partnership, specially in this case where only one of the five children of the deceased husband holds to the theory that the property in question was not ganancial in nature.

We find no reversible error in the judgment appealed from and, therefore, the same is affirmed with costs against appellant.

Gutierrez David and Borromeo, JJ., concur.

Judgment affirmed.

[No. 3157-R. June 16, 1949]

ANICIA T. REYES, plaintiff and appellee, *vs.* CONSORCIA CRISOSTOMO ET AL., defendants and appellants

1. OBLIGATIONS AND CONTRACTS; PAYMENT OF MONEY DEBTS; GENERAL RULE UNDER THE COMMON AND CIVIL LAW.—"The general rule, under the common and the civil law, is that, in the absence of a stipulation to the contrary, the character of money which is current at the time fixed for performance of a contract is the medium in which payments may be made." (*San Juan vs. St. John's Gas Company*, 195, U. S. 510); the same doctrine was laid down in the *Legal Tender* cases, and approved in *Haw Pia vs. China Banking Corporation* (GR. SC-L-564, April 9, 1948).

2. ID.; LEASE; RIGHT OF LESSEE TO A REDUCTION OF RENT; ARTICLE 1575 CIVIL CODE; REQUISITES FOR ITS APPLICABILITY.—The requisites for the applicability of article 1575 of the Civil Code concur in the present case because: (1) there is no question that the fishpond under lease constituted a rural (non-urban) tenement; and (2) the lessee lost more than one-half of the fruits; in fact the appellee could not gather them from and after October 1945; (3) the unlawful entry of armed Huks, was an event both extraordinary and unforeseen, since neither lessors nor lessee could have reasonably anticipated the breakdown of peace and order in central Luzon despite the termination of hostilities and the restoration of the legitimate government; (4) no stipulation against the application of the article.
3. ID.; ID.; ID.; ID.; ID.; FORCE MAJEURE; WILL OF A THIRD PERSON WHO PREVENTS PERFORMANCE OF AN OBLIGATION IS CONSIDERED "FORCE MAJEURE."—The legislative precedents of article 1575 clearly indicate that the depredations of strangers constitute a justification for the reduction of the rental due from the lessee (Law 22, Title 8, Partida V, of the Siete Partidas, from which the rule of article 1575 was derived). It is true that in *Lasam vs. Smith*, 45 Phil., 657, the Supreme Court of the Islands, quoting Seix, *Enciclopedia Juridica Española* (Vol. 5, p. 309), established that one of the essential characteristics of fortuitous events is that "the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with his obligation must be *independent of the human will*." But reflection will show that the phrase underlined can not be taken in its literal sense, but must be given the meaning of "independent of the will of the debtor or his agents." Thus, war, altho dependent upon the will of the combatants, is recognized in the second paragraph of article 1575 as an extraordinary fortuitous event; and violence of robbers, while not independent of the human will, is recognized by the Code as *caso fortuito* that excused nonperformance (article 1784) and has been always so recognized in the ancient law ("fuerza de ladrones," in Law II, Tit. 33, Partida VII). The will of a third person who prevents performance of the obligation is an inevitable cause, *fuerza mayor*, which comes under the general description of *caso fortuito* in article 1105 of the Civil Code. (Manresa, Vol. 8, p. 85.)
4. ID.; LEASE; ARTICLE 1575, CIVIL CODE; REDUCED RENT, HOW DETERMINED.—While the law does not determine the percentage of reduction of the rental to which the lessee becomes entitled under article 1575, it is logical that the rent stipulated be reduced in the same ratio that the actual receipts bear to the normal income obtainable from the leased tenement. Manresa's formula, which is deemed equitable, is as follows: normal fruits are to fruits actually received as rent stipulated is to X.

APPEAL from a judgment of the Court of First Instance of Bulacan. Ysip, J.

The facts are stated in the opinion of the court.

Andres R. Faustino and Rafael T. Tirona for appellants.
Bustos & Bustos for appellee.

REYES, J. B. L., J.:

This case was started by a petition for declaratory judgment filed on October 17, 1945 by Anicia T. Reyes, plaintiff-appellee, praying the Court of First Instance of Bulacan to ascertain and determine the amount of rental

which said plaintiff-appellee should pay under a contract of lease of a certain fishpond belonging to the appellants. Said contract provided specifically as follows:

"(a) Ang pamumuwisang ito ay tatagal ng *Limang Taong husto*, simula sa Mayo 15, 1944 at matatapos sa Mayo 15, 1949;

"(b) Ang kabuwisan sa bawa't taon ay hustong labing apat na libong piso (P14,000) salaping kinikilala ng batas, na pagbabayaran sa aming magkapatid nitong namumuwisang sa aming bahay-tahanan ng pauna sa taong lalakaran (pago adelantado), sa loob ng labing-limang araw (15 dias), buhat sa pagpasok ng taong kina-uukulan; tangi lamang ang nauukol sa unang taon, Mayo 15, 1944 at Mayo 15, 1945 na halagang labing-apat na libong piso (P14,000) salaping umiral, na sa paglagda namin at pagkakaloob ng kasulatang ito sa namumuwisang, o sa ikalawang panig ay nangangahulugang aming natanggap na sa kasiyahan ng aming loob"; (Record on Appeal, pp. 8-9).

Plaintiff-appellee contended that said paragraph called for a rental of P14,000 in Japanese Military currency and prayed that the court determine the equivalent amount in genuine Philippine currency.

The case was speedily converted into a contentious proceeding, because in their answer of October 30, 1945, the appellants alleged that the paragraph above-quoted called for the payment of P14,000 in Philippine currency on the 15th of May, 1945, and every year thereafter until 1949. They further alleged that plaintiff-appellee had violated the contract by failing to pay the rental for 1945-1946, and did not keep the leased fishpond in good condition; that by reason of such violation the appellants were entitled to resolve the contract and collect as rental P14,000 per year plus P5,000 damages.

Appellee made rejoinder denying having violated the lease contract; and alleged in a supplementary complaint of March 10, 1947, that from May 18, 1945 she had not been allowed to enter into a peaceful enjoyment and possession of the fishpond in question due to acts of the lessors and their agents; that the latter had retaken possession of the leased property causing damages to the lessee (plaintiff-appellee) at the rate of P10,000 per annum.

These allegations were in turn denied by the appellants in an answer to the supplementary complaint dated March 14, 1947.

The evidence submitted to the lower court is to the effect that sometime on May 18, 1944, during the Japanese occupation, a notarized agreement was entered into by and between the plaintiff-appellee and the defendants-appellants granting to the former the lease of a fishpond in Barrio Dalayap, Municipality of Macabebe, Pampanga, title of which was covered by transfer certificate of title No. 14673. (Annex A, Rec. on Appeal, pp. 5-13.) The contract was for 5 years from May 15, 1944 to May 15, 1949 at a rental of P14,000 per year, payable in advance as stipu-

lated in the paragraph hereinabove-quoted. Pursuant to this contract, lessee paid in advance to the appellants the sum of ₱14,000 for the first year, and took possession of the fishpond. It was also satisfactorily shown that toward the middle of 1945, one Troadio Gutierrez, in company of other armed persons belonging to the association known as Huk-balahap, took possession of the fishponds, claiming to be acting for the lessors, and despite the efforts of the appellee's representative, Dr. Andres Bustos, said Troadio Gutierrez and his band remained in possession and drove away the laborers of plaintiff-appellee by violence and intimidation, to the extent that after Dr. Bustos' failure in his repeated endeavors to protest the rights of the appellee, he was forced to transfer to the town of Lubao, Pampanga, where his wife hailed from, to save his life.

It also appears that sometime in December 24, 1946, the appellants-lessors succeeded in recovering possession of the premises leased, as appears in a Constancia filed on January 28, 1947. (Rec. on Appeal, p. 27.)

The appellants denied that they had authorized Troadio Gutierrez to deprive the appellee in the possession of the fishpond in question.

The main issues were first, whether the paragraph (b) of the contract of lease called for payment in Japanese currency for the second and subsequent years of the lease, or whether it called for payment in Philippine currency after the first year; and second, whether the appellee had breached her obligations as lessee in failing to pay in due time the rental stipulated and in not maintaining the property leased in good condition.

The lower court held that the second payment that fell due on May 15, 1945, was payable, under the contract in Japanese currency, and so were the subsequent rentals; that until the equivalence in commonwealth currency was set by a competent authority, the lessee cannot be considered as having defaulted in their payment; that the abandonment of the fishpond was due to the intervention of Huks under the direction of Troadio Gutierrez, for which neither the lessee nor the lessors were responsible.

For the reason that the lessors had reentered into possession of the property since December 1946, while the lease was still in force, the lower court issued judgment in favor of the plaintiff-appellee ordering the defendant lessors to redeliver the possession of the fishpond until the lease expired; ordered the lessee to pay the lessors, as annual rental, the sum of ₱933.33 in lawful Philippine currency, which sum the court considered to be the equivalent of the ₱14,000 in Japanese military currency stipulated in the contract when the lease was entered into, at the rate of one peso ₱1 for every fifteen pesos ₱15 occupation money; and absolved the plaintiff-lessee from the claims of de-

fendant-lessors for damages caused to the fishpond, without special pronouncement as to costs.

From this decision the defendants-lessors duly perfected an appeal and now allege that the lower court erred (1) in its interpretation of the provisions of the contract, Exhibit B (annex A-complaint); (2) in fixing a rate of exchange of Japanese Military currency and post occupation money; (3) in not ordering the lessee to pay the lessors ₱22,166.62 in Philippine currency as rentals due and unpaid from May 15, 1945 up to December 24, 1946; (4) in not holding that the lease contract had become dissolved and terminated for failure of the plaintiff-appellee to comply with its conditions; (5) in ordering the lessors to return the fishpond to the plaintiff-lessee until the expiration of the contract; and (6) in not sentencing the plaintiff-lessee to pay damages incurred by the defendants-lessors in the repair of the said fishponds.

In their first and second assignments of error the appellants maintain that the Court below misinterpreted the terms of the contract of lease when it held that the appellee was bound to the payment of a yearly rental of ₱14,000 occupation money, and that the equivalent value thereof was ₱933.33 in Commonwealth currency, the latter sum being the rental payable for each year from 1945 to 1949. Appellants argue that paragraph 2(b) of the contract clearly distinguishes between the rental of the first year (May 15, 1944, to May 14, 1945) and the rentals for the subsequent years, in that while the contract recites that the rent for the first year was paid in current money (*salaping umi-iral*, money in circulation), clearly referring to the occupation currency, it also provided, no less expressly, that subsequent rentals should be paid in legal tender (*salaping kinikilala ng batas*, money recognized by law). It is asserted that the latter description clearly referred to Commonwealth currency, since it was the only legal tender in May of 1945.

These assignments are well taken. There is no denying the distinction made by the parties themselves between the currency in which the first rental was paid in advance, and the currency in which the subsequent rentals were to be payable. While the words employed in referring to the latter (SALAPING KINIKILALA NG BATAS) did not refer to any specific currency, the intention is clear that the second and subsequent payments were to be made in currency that would constitute legal tender at the time when payment became due. If by that time, the Japanese Army continued in occupation then payment in military notes would be good under the contract, but if it were otherwise (as it did occur) then the rental was to be ₱14,000 in whatever currency happened to be legal tender then. The parties could not have proposed that all five annual rentals should be pay-

able in Japanese military notes even if a change of political regime made such money worthless, illegal or unobtainable.

The trial Court argued that in May, 1944, no one could foresee that the Commonwealth of the Philippines would be restored on the succeeding year, and that, therefore, the only currency that the parties could have in mind was the Military currency in use when the contract was made. The conclusion is not supported by the premise. Granting that the parties could not foresee the exact time of the restoration of the legitimate government, it was still possible to contemplate in May of 1944, that such restoration might take place some time during the five years that the contract was to run; and it was logical for the parties to agree that, in the event of any such contingency, the rentals should be payable in currency usable by the lessors. There is nothing in the contract to show that the parties desired that the rentals should be paid in current money or its *equivalent value* in other currency; on the contrary, paragraph 2(b) of the lease agreement specifically calls for a fixed amount of ₱14,000 in legal tender, or money recognized by law. The equivalence was already set in the contract at peso for peso.

The stipulation in question agrees with the general rule that money debts are payable in legal tender as of the time of performance (Art. 1170, Civil Code). As ruled in *San Juan vs. St. John's Gas Company*, 195 U. S. 510,

"The general rule, under the common and the civil law, is that, in the absence of a stipulation to the contrary, the character of money which is current at the time fixed for performance of a contract is the medium in which payments may be made. *Butler vs. Horwitz*, 7 Wall. 258, 19 L. Ed. 149; *Willard vs. Tayloe* 8, Wall. 557, 19 L. Ed. 501; *Trebilcock vs. Wilson*, 12 Wall. 687, 20 L. Ed. 460; *Comm. Code of Porto Rico*, Art. 312; *Spanish Civil Code of Porto Rico*, Arts. 1091, 1157, 1170; *Code Napoleon*, Art. 1246; *Aubry & Rau*, Vol. 4, p. 158; *Mourlon*, vol. 2, p. 749." (*San Juan vs. St. John's Gas Company*, 195 U. S. 510.)

The same doctrine was laid down in the *Legal Tender Cases*, and approved in *Haw Pia vs. China Banking Corporation* (CA. SC-L-564, April 9, 1948):

"But the obligation of contract to pay money is to pay that which the law shall recognize as money when the payment is to be made. If there is anything settled by decision it is this and we do not understand it to be controverted (*Knox vs. Exchange Bank of Virginia*, 12 Wall. 457, 20 L. Ed. 287, 311)." (*Knox vs. Lee & Parker* (*Legal Tender Cases*) 12 Wall. 457, 20 Law. Ed. 287.)

Any injustice to the debtor (who is the appellee in this case) by reason of our interpretation, proves to be merely apparent upon close consideration of the case. The contract called for *advance payments* of rental; and whatever hardship resulted to the lessee in having to pay it in non-depreciated currency was offset by the fact that the products obtained in the corresponding year would be sold for

exactly the same currency as that in which the rental had to be paid.

But appellants contend further (third error assigned) that they are entitled to collect not only the ₱14,000 in Philippine currency that fell due on May 15, 1945, but also an additional sum of ₱9,166.62 as proportionate rental corresponding to the period between May 15, 1946, (when the rent for the third year became due) until December 24, 1946, when the appellants-lessors reentered the property. This contention is untenable, because the evidence is clear, and the appellants do not seriously dispute it, that the appellee was forcibly ousted from the fishpond under lease from and after October 1945, by Troadio Gutierrez and his armed band of Hukbalahaps; and the lessee was unable to work the fishpond since the date aforesaid. Granting that, as contended by the appellants, it was not proved that said Gutierrez was their agent, but that he acted independently for his own account, still the loss of products from the fishpond from November, 1945 until December, 1946, entitles the appellee to the benefits of Article 1575 of the Code, which both parties have overlooked but which is squarely applicable:

"ART. 1575. The lessee shall have no right to a reduction of the rent on account of the sterility of the land leased or on account of the loss of the fruits through ordinary fortuitous events; but he shall have said right in case of loss of more than one-half of the fruits through extraordinary and unforeseen, fortuitous events, saving always a special agreement to the contrary.

"By extraordinary fortuitous events shall be understood fire, war, pestilence, extraordinary floods, locusts, earthquakes, or any other equally unusual events, which the contracting parties could not have reasonably foreseen."

All the requisites for the applicability of this article concur in the present case:

(1) There is no question that the fishpond under lease constituted a rural (non-urban) tenement; and

(2) The lessee lost more than one-half of the fruits; in fact the appellee could not gather them from and after October 1945;

(3) The unlawful entry of Troadio Gutierrez and his armed Huks was an event both extraordinary and unforeseen, since neither lessors nor lessee could have reasonably anticipated the breakdown of peace and order in central Luzon despite the termination of hostilities and the restoration of the legitimate government.

(4) No stipulation against the application of the article.

The legislative precedents of article 1575 clearly indicate that the depredations of strangers constitute a justification for the reduction of the rental due from the lessee. Law 22, Title 8, Partida V, of the Siete Partidas (from which

the rule of article 1575 was derived) is to the following effect:

"Destruyendose o perdiendose los frutos de alguna heredad o viña o otra cosa semejante, que toviessse arrendada un ome de otro, por alguna ocasión que acaesciensse que non fuesse muy acostumbrada de avenir, assi como por avenidas de rios * * * o por hueste de los enemigos o *por assonadas de otros o mes que los destruyessen* * * * o por alguna otra ocasión semejante que tollesse todos los frutos, dezimos que non es tenuto el que lo toviessse arrendado de dar ninguna cosa del precio del arrendamiento que oviesse prometido dar. Ca guisada cosa es que como el pierde la simiente e su trabajo, que pierda el señor la renta que deve aver."

It is true that in *Lasam vs. Smith*, 45 Phil., 657, the Supreme Court of the Islands, quoting seix, Enciclopedia Juridica Española (Vol. 5, p. 309), established that one of the essential characteristics of fortuitous events is that "the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with his obligation must be *independent of the human will*." But reflection will show that the phrase underlined can not be taken in its literal sense, but must be given the meaning of "independent of the will of the *debtor or his agents*." Thus, war, although dependent upon the will of the combatants, is recognized in the second paragraph of article 1575 as an extraordinary fortuitous event; and violence of robbers, while not independent of the human will is recognized by the Code as *caso fortuito* that excuses nonperformance (article 1784) and has been always so recognized in the ancient law ("fuerza de ladrones," in Law II, Tit. 33, Partida VII). The will of a third person who prevents performance of the obligation is an inevitable cause, *fuerza mayor*, which comes under the general description of *caso fortuito* in article 1105 of the Civil Code. Manresa says in his Commentaries to the latter article (Vol. 8, p. 85):

"Dentro del concepto general y comun del *caso fortuito*, se comprenden este propiamente dicho y la *fuerza mayor*, y tanto aquel como esta pueden ser ordinarios o extraordinarios. La diferencia entre aquellas dos especies es sencilla: el *caso fortuito*, como tal, es independiente, no solo de la voluntad del deudor, sino de toda voluntad humana; la *fuerza mayor* procede de un acontecimiento inevitable, o del acto, *legítimo o ilegítimo, de persona distinta de la obligada*, que supone para esta la imposibilidad de cumplir su obligación." (Italics supplied.)

While the law does not determine the percentage of reduction of the rental to which the lessee becomes entitled under article 1575, it is logical that the rent stipulated be reduced in the same ratio that the actual receipts bear to the normal income obtainable from the leased tenement. Manresa's formula, which is deemed equitable, is as follows: normal fruits are to fruits actually received as rent stipulated is to X.

Now, it appears from the record that the appellee obtained during the first year ₱28,000 for the sale of fish and ₱7,000 for the sale of nipa leaves, or a total of ₱35,000, in Japanese currency which, at the proved exchange rate of fourteen to one, represents around ₱2,500 in Philippine currency. But for the second year appellee only obtained ₱800—from Troadio Gutierrez through Doctor Bustos. The testimony of the appellants' witness, Manuel Crisostomo, about the receipts of the lessee is not credible, since he was not placed in charge of the fishpond until 1947. In consequence the rent for the second year, should be reduced to 8/25ths of ₱14,000 (the rent originally stipulated), i.e., ₱4,480. For the third year (1946–1947) no rental is due since the lessee was dispossessed completely and received nothing on account of the products.

The total rent due to the appellants-lessors for the second and third years is therefore only ₱4,480. No rent is payable or claimed for the remaining years, since the lessors retook possession of the fishpond leased in December, 1946.

The next question raised by appellants (errors IV to VI) is that part of the judgment appealed from ordering them to restore possession to appellee for the balance of the lease period, i.e., until May 15, 1949. It is clearly useless at the present time to so order, since the total period is about to expire; but the contention of appellants that the contract of lease should have been declared rescinded and terminated as of the date they resumed possession, must be resolved for the proper adjudication of the rights of the parties. The lower court decided that the appellants lessors had no right to reenter the property during the period of the lease, because only the Courts are authorized to decree the resolution of contracts duly perfected. There can be no quarrel with the rule thus propounded which is supported by article 1124 of the Civil Code; but it is not applicable to the case at bar. The appellee lost possession of the fishpond in November, 1945, and had taken no steps to recover the same, nor made any demand upon the lessors to maintain her in the enjoyment of the premises leased. Even when Gutierrez and his henchmen abandoned the place, it was the lessors and not the lessee who learned of it and reentered and retook possession. This conduct of the appellee plainly indicates that she had abandoned the lease definitely and given up all expectation to repossess the fishpond. Under the circumstances, the lessors were entitled to accept the renunciation and consider the contract terminated, and to recover their property. Both parties having tacitly considered the contract as abandoned and cancelled, the rule of article 1124 is of no application, because said rule is limited to cases of resolution premised

on a breach of contract by one of the parties, and not upon a case of termination by mutual agreement, express or implied.

Finally, the appellants are not entitled to recover damages from the appellee for the expenses incurred by them in repairing the fishpond and placing it back in a serviceable condition. There is no proof that the damage occurred while the appellee was in possession, and on the contrary, her testimony is uncontradicted that she spent large sums during the first year to recondition the fishpond. It is inferable from the evidence that the growth of brush, and the damage to the dikes were due to the occupation and neglect of Troadio Gutierrez and his band, who were more intent in gathering the products than in keeping the fishpond in repair. But as previously observed, the ouster of appellee by the Hukbalahaps constitutes a case of *force majeure* for which she can in no way be held responsible.

Therefore, the judgment appealed from is reversed, and appellee is hereby sentenced to pay appellants the sum of Four Thousand Four Hundred Eighty Pesos (P4,480) as rental for the period elapsing from May 15, 1945 to December 29, 1946, without interest, the amount not having been previously liquidated (*Pardell vs. Bartolome*, 23 Phil., 450; *Montilla vs. Corporación de PP. Agustinos*, 25 Phil., 447; *Seton Domia vs. Ynouye*, 40 Phil., 728). Without special pronouncement as to costs.

Gutierrez David and Borromeo, JJ., concur.

Judgment reversed.

[No. 2216-R. Junio 17, 1949]

EL PUEBLO DE FILIPINAS, querellante y apelado, *contra* SEBASTIAN OCAMPO y FELICIDAD CATINDIG, acusados y apelantes.

1. DERECHO PENAL; AMANCEBAMIENTO; TRES MANERAS DE COMETER EL DELITO; CASO DE AUTOS.—Hay tres maneras de cometer el delito de concubinato bajo el Art. 334 del Código Penal Revisado: (a) Cuando un hombre casado mantiene una concubina en la casa conyugal no importa que no haya habido escándalo; (b) cuando un hombre casado hace comercio carnal con una mujer que no es la suya en circunstancias escandalosas; y (c) cuando un hombre casado cohabita con una mujer que no es su esposa en cualquier lugar y circunstancia. La presente causa está dentro del último caso, porque probado está que acusado y acusada estuvieron conviviendo en la casa de la última. Si el acusado cohabitó con su coacusada, como así resulta de las pruebas, este hecho es bastante para declararles culpables de concubinato, a sabiendas de parte de ella de que su coacusado era un hombre casado, según admisión propia. El escándalo no es elemento esencial en este caso, aunque el mero hecho de cohabitar un hombre casado con una mujer que no es su esposa lleva consigo el escándalo, por tanto no necesita ser probado. El término "cohabitar" implica la existencia de una relación de

quod thorum et mutuum habitationem, esto es, la convivencia de los dos amantes bajo un solo techo. [Pueblo *contra* Pitoc et al., 43 Jur. Fil., 794; Estados Unidos *contra* Legaspi et al., 14 Jur. Fil., 39; Sentencia del Tribunal Supremo de España de 23 de Junio de 1874, Viada, 3 Cod. Penal, 108.]

2. ID.; ID.; PRUEBAS; DEFENSA DE CONSENTIMIENTO O TOLERANCIA DEBE SER CLARA Y POSITIVA.—Siendo el consentimiento o tolerancia una defensa en los casos de amancebamiento, incumbe a los acusados presentar esta defensa con pruebas claras y positivas. (Pueblo *contra* Llagas y Neri, 40 Off. Gaz., p. 90.)

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Manila. Rodas, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

D. Marcelino Lontok en representación de la apelante Catindig.

D. Santiago F. Alidio en representación del apelante Ocampo.

El Procurador General Auxiliar Sr. Guillermo E. Torres y *el Procurador Sr. Manuel Tomacruz* en representación del apelado.

BORROMEIO, M.:

Los acusados Sebastian Ocampo y Felicidad Catindig, convictos en el Juzgado de Primera Instancia de Manila del delito de amancebamiento, han apelado separadamente de su sentencia condenatoria presentando cada uno el correspondiente alegato.

Conchita Vega, la denunciante, es esposa legítima de Sebastián Ocampo. Felicidad Catindig sabía que su co-acusado era casado con aquélla. Marido y mujer vivían separadamente desde el año 1943.

Estos son hechos probados y admitidos por ambos acusados.

Los apelantes, empero, contienden que no hay prueba válida de comercio sexual entre los dos, ni mucho menos que lo hubo con escándalo público, o que los dos habían cohabitado. La apelante contiene, además, que aunque lo hubiera, la responsabilidad criminal ha quedado extinguido por tolerancia de la ofendida.

Hemos revisado las pruebas aportadas al juicio y estamos convencidos con el juez sentenciador de la culpabilidad de ambos acusados.

La prueba de las relaciones ilícitas de los apelantes no consiste en el testimonio de la denunciante de que élla había visto personalmente a los dos en acceso carnal en 1943. Semejante prueba no podía haber sido admitida en el juicio porque siendo una declaración hecha en el período de contrapruebas, la objeción de la defensa debió de haber sido sostenida.

Es un hecho probado, no obstante, por el testimonio de la denunciante y del joven Jose Ocampo, hijo de élla y del

acusado, de que el mes de febrero de 1946, habiendo élla amenazado a su hijo con mandarle al reformatorio, éste pasó a vivir por algunos días con su padre en la calle Constancia No. 514, Manila, donde también vivía su coacusada, y allí observó Jose que su padre convivía con Felicidad como si fueran marido y mujer. Todas las noches, durante el período de cinco días de su estancia allí, su padre y Felicidad dormían juntos en una sola cama y solo les separaba de él (Jose) una partición de sawale. Cuando la denunciante se fué a aquella casa en la mañana temprana del 20 de aquel mes y año para sacar a su hijo que se había escapado de su poder, su marido le salió al encuentro en la puerta y le mandó salir con el hijo reprochándola por haberse atrevido a venir a aquella casa y diciéndole, además, que no quería vivir más con élla aunque élla le enviara a la cárcel.

Lo que antecede es una prueba circunstancial que conduce a una conclusión inevitable de que ambos acusados sostenían relaciones ilícitas al menos durante el tiempo en que Jose Ocampo vivía con su padre en la casa de Felicidad Catindig. El hecho de que ambos vivían bajo un solo techo y dormían juntos en una sola cama, es prueba suficiente de dichas relaciones ilícitas. En U. S. *vs.* Legaspi et al., 14 Phil., 40-41, se ha declarado que la presencia inexplicada de un hombre a altas horas de la noche a solas en una habitación con la mujer de otro, estando élla en una cama y ausente de la casa conyugal sin el consentimiento y conocimiento de su marido, es prueba suficiente de adulterio. Asimismo, se ha declarado por el Tribunal Supremo de España en sentencia de junio 23, 1874 (Viada, 3 Cod. Pen., 108), que el hecho de haberse encontrado en posesión de una mujer casada varias cartas amorosas firmadas por su amante con la circunstancia, además, de que élla y su habían estado varias veces en una casa de cita, es prueba amante habían estado varias veces en una casa de cita, es prueba bastante para justificar una convicción por el delito de adulterio.

Se contiene por los apelantes que aun en el supuesto de la existencia de sus relaciones ilícitas, su convicción no está justificada en esta causa por falta de prueba de cohabitación y escándalo.

Hay tres maneras de cometer el delito de concubinato bajo el Art. 334 del Código Penal Revisado: (a) cuando un hombre casado mantiene una concubina en la casa conyugal no importa que no haya habido escándalo; (b) cuando un hombre casado hace comercio carnal con una mujer que no es la suya en circunstancias escandalosas; y (c) cuando un hombre casado cohabita con una mujer que no es su esposa en cualquier lugar y circunstancia.

La presente causa está dentro del último caso, porque probado está que acusado y acusada estuvieron conviviendo

en la casa de la última en la calle Constancia No. 514, Ciudad de Manila, según resulta del testimonio de Jose Ocampo, hijo del acusado, de cuya credibilidad no tenemos la menor duda, aunque la atacan los apelantes conceptuando sus declaraciones de enseñadas. El juez sentenciador que tuvo oportunidad de observar la conducta del testigo en el juicio, dió entero credito al joven Ocampo, y no vemos motivo alguno, después de revisar los autos, de alterar sus apreciaciones. Si el acusado cohabitó con su coacusada, como así resulta de las pruebas, este hecho es bastante para declararles culpables de concubinato, a sabiendas de parte de élla de que su coacusado era un hombre casado, según admisión propia. El escándalo no es elemento esencial en este caso, aunque el mero hecho de cohabitar un hombre casado con una mujer que no es su esposa lleva consigo el escándalo, por tanto no necesita ser probado. El término "cohabitar" implica la existencia de una relación de *quod thorum et mutuum habitationem*, esto es, la convivencia de los dos amantes bajo un solo techo. (People vs. Pitoc et al., 43 Phil., 758.)

La defensa de los acusados es una negativa de la existencia de sus relaciones ilícitas. Admiten haber vivido en la casa misma de la acusada pero que el acusado no era más que un inquilino del piso bajo mientras que élla vivía en el piso alto. Como llegaron a vivir bajo un solo techo, Sebastian declaró que mientras buscaba una casa donde vivir, se encontró con Felicidad a quien le había conocido en 1942, y él la suplicó que le permitiera alquilar los bajos, al paso que élla declaró que no sabía cuando Sebastián pasó a vivir en su casa porque élla se hallaba entonces en provincias hasta fines de 1945 y cuando volvió a Manila a principios de 1946, élla encontró que su coacusado ya estaba ocupando los bajos de su casa. El acusado declaró que no fué él sino su esposa la que abandonó la casa cónyugal. Si esto fuera cierto no se explica por que tenía el que vivir precisamente en casa de su coacusada en vez de la suya propia cuando no era él quien abandonó el hogar. Como se ve, las protestas de inocencia de ambos acusados no están justificadas ante las pruebas circunstanciales concluyentes de su culpabilidad.

La apelante contiene, además, que "la ofendida no ha presentado acción inmediatamente, apesar de haber tenido conocimiento de las supuestas relaciones ilícitas desde 1943, y el hecho de que su marido pidió perdon, prometiendo mantenerla y dejó la suma de ₱20, demuestra que élla por lo menos ha tolerado los actos de su marido."

Los records de esta causa no justifican la contención de la apelante. En 1943 la ofendida presentó denuncia contra los aquí apelantes, según declaración propia del acusado, pero la causa se sobreseyó por falta de pruebas. Desde entonces marido y mujer ya estaban separados, y la ofen-

dida, después de tantos enfuerzos de localizar a su marido, le halló en la casa de su coacusada en aquella mañana del mes de febrero de 1946 cuando la denunciante, buscando a su hijo que se había escapado de su poder por haberle amenazado con mandarle al reformatorio, le encontró allí.

El mero hecho de que el apelante, después de aquel incidente, haya ido a la casa de la ofendida dejándole ₡20 sobre la mesa con promesa de mantenerla y rogándole que se callara y no le molestara más, no es ninguna prueba de consentimiento de parte de la ofendida a las relaciones ilícitas del marido con su coacusada. Para extinguir la responsabilidad criminal por consentimiento o tolerancia de la parte ofendida en un caso por adulterio o amancebamiento, la prueba tiene que ser clara y positiva de que hubo tal consentimiento o tolerancia. Los autos demuestran, además, que debido a su delicada salud, la denunciante sólo pudo presentar su denuncia formal el enero 6, 1947, su médico habiéndole aconsejado reposo antes de esta fecha. De todos modos, no hay prueba alguna en autos de que la ofendida consintió o toleró las mutuas relaciones ilícitas de los apelantes. Siendo el consentimiento o tolerancia una defensa, incumbía a los acusados presentar esta defensa con pruebas claras y positivas. (*People vs. Llagas and Neri*, 40 Off. Gaz., 90.)

Estando la sentencia apelada ajustada a los hechos y la ley, confirmamos la misma, con las costas a los apelantes por mitad cada uno.

Reyes y Gutierrez David, MM., están conformes.

Se confirma la sentencia.

[No. 3018-R Junio 17, 1949]

CEFERINO PATIÑO, demandante y apelante, *contra* ANTONIO DONADO, demandado y apelado

1. AMILLARAMIENTO; CONFISCACIÓN POR MOROSIDAD EN SU PAGO; SUBASTA PÚBLICA Y SUS REQUISITOS ESENCIALES.—En casos de confiscación de propiedades raíces morosas en el pago del amillaramiento, la ley provee que debe darse el aviso de morosidad, después el aviso de confiscación y mas tarde el anuncio de subasta. Este último anuncio debe fijarse en los sitios designados por la ley; debe ser publicado en un periódico local, si lo hubiere; debe expresar la cantidad o el impuesto adeudado, el recargo, costas de la venta, fecha exacta de la venta y lugar de la misma, el nombre del dueño moroso, la extensión superficial del terreno, el número del lote, el lugar donde este situado, con mención de la calle, número, distrito, barrio, municipio y provincia. Copia de este anuncio debe ser enviada al dueño del terreno.
2. ID.; ID.; PRUEBAS; DEBIDO CUMPLIMIENTO DE LOS REQUISITOS LEGALES; A QUIEN INCUMBE; OBJETIVO DE LA LEY.—En relación con los procedimientos administrativos de confiscación de propiedades raíces en el pago de amillaramiento que, como resultado, privan al ciudadano o contribuyente de su propiedad,

incumbe al comprador el probar, de un modo acabado, el debido cumplimiento de los requisitos de la ley, que constituyen el proceso (*Valencia vs. Jimenez et al*, 11 Phil., 492, y *Camo vs. Riosa Boyco*, 29 Phil., 457) y que se han establecido para proteger al contribuyente concediéndosele amplia oportunidad para saldar su morosidad y evitando la tentadora connivencia que pudiese existir entre el comprador y los funcionarios al objeto de privarle de su propiedad por un precio exiguo o nominal (*Lucido y otros vs. Isais y otros*, 43 Off. Gaz., pág. 4152).

APELACIÓN contra una sentencia del Juzgado de Primera Instancia de Capiz. Hernandez, J.

Los hechos aparecen relacionados en la decisión del Tribunal.

Platon Patiño en representación del apelante.

Santiago Abella Vito en representación del apelado.

GUTIERREZ DAVID, M.:

Con anterioridad al mes de noviembre de 1937, Antonio Donado era dueño registrado del lote No. 59 del catastro del municipio de Dao, Provincia de Cápiz, con certificado original de título No. 21873. Lo había adquirido de su tío Damian Celorio, fallecido en 1936, y a cuyo nombre estaba declarado dicho lote para fines de amillaramiento antes del año 1937, bajo la hoja declaratoria No. 17680, con valor amillarado de ₱850.

El citado terreno estuvo moroso en el pago de la contribución territorial. Fué confiscado por el gobierno municipal de Dao y vendido por el tesorero municipal en subasta pública llevada a cabo en 15 de julio de 1937. Lo compró Ceferino Patiño por ₱22.50 en dicha subasta. No habiéndose efectuado la recompra del mismo dentro del año, el citado tesorero hubo de expedir el certificado de venta definitiva a favor de Ceferino Patiño en 3 de septiembre de 1938.

Armado de dicha venta, Patiño entabló la presente acción para obligar a Donado que le transfiera el certificado de título del citado lote.

Donado se defiende cuestionando principalmente la legalidad de la subasta y de las ventas verificadas por el citado tesorero municipal de Dao a favor del demandante fundándose en que las mismas no se han hecho de acuerdo con la ley.

Previo el juicio correspondiente, el Juzgado de Primera Instancia de Cápiz falló el asunto sobreseyendo la demanda, ordenando al demandado, sin embargo, a desembolsar la suma de ₱22.50 abonada por el demandante por la morosidad del terreno cuestionado; sobreseyendo la contrademanda del demandado; y ordenando al actor que restituya la posesión del terreno al demandado y pague las costas.

A petición del demandado, dicho juzgado ordenó la ejecución de la sentencia, de conformidad con el artículo 2,

de la Regla No. 39 de los Reglamentos, a menos que el demandante preste una fianza *supersedeas* de P300.

En su decisión, el juzgado *a quo* halló y declaró que la venta celebrada por el tesorero municipal de Dao era nula y de ningún efecto legal porque dicho tesorero no tenía atribuciones para otorgar la venta definitiva a favor del demandante y porque de la subasta del terreno no había sido notificado el verdadero dueño, que es el demandado, y el anuncio de venta publicado era nulo por no estar de acuerdo con la ley.

De dicha decisión el demandante apeló. En apoyo de su recurso alega que las citadas conclusiones del juzgado inferior son erróneas y que dicho juzgado erró, además, al no haber fallado el asunto a su favor y al haber ordenado la ejecución de la sentencia después de expirado el plazo para la apelación.

En casos de confiscación de propiedades raíces morosas en el pago del amillaramiento, la ley provee que debe darse el aviso de morosidad, después el aviso de confiscación y mas tarde el anuncio de subasta. Este último anuncio debe fijarse en los sitios designados por la ley; debe ser publicado en un periódico local, si lo hubiere; debe expresar la cantidad o el impuesto adeudado, el recargo, costas de la venta, fecha y lugar de la misma, el nombre del dueño moroso, la extensión superficial del terreno, el número del lote, el lugar donde está situado, con mención de la calle, número, distrito, barrio, municipio y provincia. Copia de este anuncio debe ser enviada al dueño del terreno.

En relación con estos procedimientos administrativos que, como resultado, privan al ciudadano o contribuyente de su propiedad, incumbe al comprador el probar, de un modo acabado, el debido cumplimiento de los requisitos de la ley, que constituyen el proceso, como son los que se acaban de mencionar (*Valencia vs. Jimenez et al.*, 11 Phil., 492, y *Camo vs. Riosa Boyco*, 29 Phil., 457) y que se han establecido para proteger al contribuyente concediéndosele amplia oportunidad para saldar su morosidad y evitando la tentadora y connivencia que pudiese existir entre el comprador y los funcionarios al objeto de privarle de su propiedad por un precio exiguo o nominal (*Lucido y otros vs. Isais y otros*, 43 Gaz. Of., 4152).

En el caso que nos ocupa, el demandante, como comprador, si bien ha intentado acreditar la regularidad y legalidad de la venta hecha a su favor, pero ha fracasado totalmente. No ha presentado el supuesto anuncio de subasta o su copia autenticada. No ha establecido cuando y donde se ha fijado el mismo o si se ha hecho o no su publicación en algún periódico o en el semanario "Weekly Visitor" que se editaba en la cabecera de Cápiz. En cambio, se ha establecido claramente por el demandado que él, siendo el dueño registrado del terreno confiscado y vendido, no

ha recibido notificación alguna sobre la supuesta subasta. Este hecho halla corroboración, en cierto modo, en el testimonio del mismo apelante quien aseguró que apesar de que sabía que la propiedad en cuestión había sido confiscada, estaba anunciada para la subasta y que su dueño registrado, el apelado, era su pariente y compañero de casa, no le enteró a éste de tales hechos. Asimismo está corroborado por el tesorero Bolaño, testigo del demandante, quien afirmó que había enviado el aviso de la subasta a los herederos del finado Damian Celorio porque éste era el dueño que aparecía en el padron de amillaramiento. Y el único heredero conocido de Damian Celorio es el apelante mismo.

La disposición legal que requiere se envíe el aviso de subasta al contribuyente moroso se refiere también al dueño registrado, que está obligado a pagar contribuciones, aunque la propiedad morosa permaneciese amillarada a nombre de un dueño anterior, tal como así ha declarado el Tribunal Supremo en el asunto de Cabrera *contra* el Tesorero Provincial de Tayabas y otros, 42 Gaceta Oficial 1942 dando la siguiente razón:

"* * * There can be no reason why Torrens title, which binds the whole world, cannot at least charge the government which has issued it, with notice thereof." (*Supra.*)

Por lo demás el abogado Sr. Manuel A. Arbuez, administrador del semanario "Weekly Visitor" en que podían haber sido publicados hacia los años 1936 o 1937, los anuncios de venta en subasta de los terrenos morosos en la provincia de Cápi, entre ellos el del terreno en cuestión, aseguró que el formulario de anuncio de subasta que se había usado de un modo uniforme en todos los municipios de Cápi era similar al que él tenía a la vista mientras declaraba como testigo y que él leyó en sesión abierta. En dicho formulario se fija para la venta en subasta un determinado día con la adición de la frase: "and every day thereafter beginning at 9 o'clock a. m. of said day * * *". Si semejante formulario se ha utilizado para la subasta del terreno en cuestión, es evidente que el aviso de ella no estaba de acuerdo con el requerimiento obligatorio de la ley al efecto de que se debe fijar la fecha exacta o verdadera de la venta. El Tribunal Supremo, en el asunto arriba citado de Cabrera *contra* el Tesorero Provincial de Tayabas, y en que hubo de anularse una venta similar a la que nos ocupa, sentó la siguiente doctrina:

"Under the law (Commonwealth Act No. 470, section 35), the provincial treasurer is enjoined to set forth in the notice, among other particulars, the date of the tax sale. This mandatory requirement was not satisfied in the present case because the announcement that the sale would take place on December 15, 1940 and every day thereafter, is as general and indefinite as a notice for the sale 'within this or next year' or 'some time within the month

of December.' In order to enable a taxpayer to protect his rights, he should at least be apprised of the exact date of the proceeding by which he is to lose his property."

Cierto detalle hay en los autos que indujo al juez sentenciador, y también a nosotros, a dudar de que se haya publicado realmente el aviso de venta del lote cuestionado en el semanario "Weekly Visitor." Tal es el hecho de que en el precio de la venta, que figura en el exhibito A, montante a la suma total de ₱22.50, no se haya incluido la de ₱30 que, según el tesorero de Dao, era lo que cobraba la citada publicación por cada parcela anunciada y que por ley debe cargarse al precio de la venta. Por ser excesiva dicha tarifa, según el mismo tesorero, hubo de discontinuarse la publicación en dicho semanario de los anuncios de subasta del municipio de Dao.

Por lo que queda dicho, hallamos que el juzgado inferior obró con acierto al declarar nulos el aviso de subasta y la venta otorgada a favor del apelante sobre el terreno controvertido.

Con esta conclusión creemos innecesario discutir los otros puntos suscitados atañentes a la cuestión en el fondo.

La contención de que la expedición de la orden de ejecución especial fué hecha fuera de la jurisdicción del juzgado inferior, puesto que se expidió después de la expiración del término concedido para la apelación, carece de méritos. El juzgado retiene jurisdicción para ordenar la ejecución aun después de expirado dicho plazo y hasta la aprobación del expediente y de la fianza de apelación (*Borja vs. De la Costa*, G. R. No. 48310).

Por todas las razones expuestas, la decisión y orden, objeto de la apelación, quedan confirmadas, con las costas a cargo del apelante.

Reyes y Borromeo, MM., están conformes.

Se confirman la decisión y orden.